

**TAX HAVEN ABUSES: THE ENABLERS, THE TOOLS  
AND SECRECY—VOL. 1 OF 4**

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**HEARING**

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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AUGUST 1, 2006  
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Printed for the use of the Committee on Homeland Security  
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## **TAX HAVEN ABUSES: THE ENABLERS, THE TOOLS AND SECRECY—VOL. 1 of 4**

**TUESDAY, AUGUST 1, 2006**

U.S. SENATE,  
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,  
OF THE COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 9:03 a.m., in room SD-106, Dirksen Senate Office Building, Hon. Norm Coleman, Chairman of the Subcommittee, presiding.

Present: Senators Coleman, Levin, Collins, Stevens, Carper, Dayton, and Lautenberg.

Staff Present: Raymond V. Shepherd III, Staff Director and Chief Counsel; Mary D. Robertson, Chief Clerk; Leland B. Erickson, Senior Counsel; Mark D. Nelson, Senior Counsel; Elise J. Bean, Staff Director/Chief Counsel to the Minority; Robert L. Roach, Counsel and Chief Investigator to the Minority; Dan Berkovitz, Counsel to the Minority; Laura Stuber, Counsel to the Minority; Zachary Schram, Professional Staff Member to the Minority; Julie Davis, Counsel to Senator Levin; Eric J. Diamant, Detailee, GAO; John McDougal, Detailee, IRS; Ben Schweiger, Law Clerk; Amanda Wahlig, Law Clerk; Mark L. Greenblatt, Deputy Chief Counsel; Steven A. Groves, Senior Counsel; Jay Jennings, Senior Investigator; James McKay, Homeland Security and Governmental Affairs Committee/Senator Collins; Cindy Barnes, Detailee, GAO; Cathryn Sitteding, Intern; and Ryan Myers, Intern.

### **OPENING STATEMENT OF SENATOR COLEMAN**

Senator COLEMAN. This hearing of the Senate Permanent Subcommittee on Investigations is called to order. I want to thank you all for attending today's hearing.

I want to first thank the Subcommittee's Ranking Member, Senator Levin, for initiating this investigation, and I want to commend his tenacity in identifying tax shelter abuse by those willing to exploit loopholes in the system and engage in questionable conduct for the sole purpose of avoiding legitimate taxes. This has been a very extensive investigation, and the Ranking Member has been a champion of taxpayers across the board. We have done a number of investigations in this area, and we have joined in this, and I want to thank him and his staff for his extraordinary efforts.

Senator LEVIN. Thank you, Mr. Chairman, very much.

Senator COLEMAN. Today's hearing continues this effort by examining the extent to which U.S. individuals are abusing offshore

jurisdictions to circumvent compliance with U.S. tax securities and anti-money-laundering laws. The offshore problem has become one of staggering proportions. Offshore tax havens and financial secrecy jurisdictions hold an estimated \$1.5 trillion in U.S. assets, resulting in a projected annual drain on the U.S. Treasury of \$50 to \$70 billion in lost taxes.

While these jurisdictions claim to offer limited financial disclosures, light regulations, enhanced asset protection, and financial privacy, in reality they have become the Wild West of the financial world, havens for fraud and evasion. U.S. citizens have found ways to utilize these offshore tax and secrecy havens to conceal ownership of assets and obscure the economic reality underlying financial transactions, while staying one step ahead of U.S. law enforcement.

All taxpayers are victimized by this behavior. Not only do these actions shift the burden to taxpayers who are in full compliance with our laws, but they also create a revenue shortfall depriving the Treasury of funds that could be used to finance education for our children, additional funding for health care, investment in alternative fuels and renewable energy, and our fight against terrorism—all the things that government does or tries to do are shortchanged by these actions. Our tax and securities laws must be strengthened to provide greater transparency in this secretive offshore world and bring those who seek to avoid our laws offshore into full compliance.

Equally important, offshore jurisdictions that have tailored their laws to become havens for tax evasion and financial fraud must be prevented from receiving U.S. tax benefits afforded other countries that provide adequate disclosures of financial information.

The nature of offshore abuse today ranges from the clearly criminal to the questionable. Most U.S. taxpayers do not go offshore alone. They are supported by an industry of domestic and offshore service professionals and asset protection specialists who encourage and assist them in moving their assets offshore. These professionals claim to offer their clients asset protection and financial privacy, but in reality they are offering asset protection with a wink and a nod. The real objective quite often is to shelter assets from U.S. law enforcement, especially the IRS. This objective is accomplished through the establishment of offshore trusts and corporations that in reality are often owned and controlled by the U.S. client, but on paper are owned by nominee officers and directors in the offshore jurisdictions.

I am concerned about the conduct of these professionals and question whether an entire industry that purports to use creative legal solutions to help their clients has in too many cases become architects of strategies designed to avoid and abuse U.S. law. We need the professional community to be pillars of commerce rather than pillars for circumvention.

Over the course of the year-long investigation, the Subcommittee explored many of the various ways U.S. citizens hide assets, avoid taxes, and use offshore structures to avoid or circumvent U.S. laws. A number of these cases involved fraud and criminal conspiracy and resulted in indictments and convictions.

For example, the Subcommittee examined how promoter Lawrence Turpen provided Robert Holliday various shell corporations



and offshore trusts. Mr. Turpen selected numerous offshore service providers to provide nominee directors and trustees for the newly created entities.

According to Mr. Holliday, he was the “puppet master” to a team of offshore service providers to shelter and hide assets, allowing him to use the assets to pay his expenses onshore. Mr. Holliday and Mr. Turpen pled guilty to tax-related conspiracy charges.

The story of Mr. Greaves is another example of a U.S. citizen who moved hundreds of thousands of dollars offshore and retained the ability to control and use the assets. Under the guidance of offshore promoter Terry Neal, Mr. Greaves became a “business consultant” for an offshore structure he set up, and he was able to communicate instructions to his companies offshore. He created fake mortgages and insurance policies, and then took deductions for payments never made. In 2004, both men pled guilty to related Federal tax evasion.

While these cases present clear cases of criminal tax evasion and fraud, others are more complex and not as clear.

The complex cases that the Subcommittee reviewed are eye-opening in revealing the extent to which an entire industry of onshore and offshore professionals, including attorneys, accountants, bankers, brokers, and corporate and trust service providers, are helping U.S. individuals undermine our tax, securities, and anti-money-laundering laws. While complicated, these strategies still raise the same issues. All work on the same theme, obscuring the economic reality behind the transactions and hiding U.S. ownership of offshore assets. Should U.S. citizens be allowed to use offshore secrecy laws to produce too good to be true tax results by hiding their activities from U.S. law enforcement? I also question at what point reliance on counsel simply becomes a convenient excuse, a way to cover one’s tracks. The issue is simply one of where the line should be drawn.

For more than a year, the Subcommittee examined the activities of Sam and Charles Wyls, high-net-worth individuals from Texas, who sheltered at least \$190 million in stock option compensation in a complex network of 58 offshore trusts and shell corporations established to benefit their families. To shield these assets from the IRS SEC, and potential creditors, the Wyls disavowed ownership and control. The evidence reviewed by the Subcommittee tells a different story. The evidence shows that the Wyls and their representatives initiated and planned virtually every transaction that the offshore entities entered, and used quirks in offshore trust law and financial secrecy to direct the investment and use of the offshore assets for their own benefit and enjoyment. Indeed, during the 13-year period from 1992 to 2004 reviewed by the Subcommittee, the offshore entities transferred approximately \$600 million in untaxed, offshore assets to support the Wyls in their business and personal interests. In many cases, offshore funds that the Wyls claimed not to control were used to purchase real estate and personal property, including art and jewelry used by the Wyls and their families, and even to loan offshore funds to the Wyls personally, on favorable, unsecured terms.

For example, more than \$140 million in loans were authorized by offshore trusts set up by the Wyls to advance Sam and Charles

Wyly's personal and business interests; \$85 million was authorized by an offshore trust set up by the Wyls to purchase real estate in the United States that the Wyls were able to use, live in, and enjoy; and nearly \$30 million was authorized by an offshore trust to purchase artwork, furnishings, and jewelry that members of the Wyly family were able to use and enjoy as their own.

The Wyly facts are illustrative of the scope, breadth, and complexity of the efforts undertaken by U.S. individuals to utilize offshore jurisdictions to circumvent U.S. regulation and to hide their assets, but they are also indicative of the extent to which U.S. taxpayers are assisted in their efforts by attorneys and other professional advisors.

At some point, however, the line is crossed, and reliance on counsel just becomes a convenient excuse. With respect to the Wyls, it strains credulity to believe that the Wyls did not have reason to know that their ability to direct and use these offshore assets contradicted their representation that they did not own or control these assets for U.S. tax and securities purposes.

Another strategy investigated by the Subcommittee was designed and marketed by the Quellos Group, a Seattle-based investment firm, to a handful of its extremely high-net-worth U.S. clients. Known as POINT, this complex strategy was designed to delay and eliminate taxes on capital gains and relied in part on offshore secrecy in the Isle of Man to obscure the true nature of the transaction from U.S. law enforcement. Quellos sold this strategy to five high-net-worth taxpayers, who together sheltered \$2 billion in investment gains, depriving the Treasury of an estimated \$300 million in tax revenue.

Quellos was assisted in its activities by prominent U.S. law firms, who provided advice on structuring the transactions and opinion letters validating them, U.S. financial institutions, who provided financing and technical assistance, and offshore investment advisors, who through the use of two Isle of Man shell corporations claim to have created a paper portfolio of over \$9.6 billion in securities, including more than \$1 billion in paper losses available for purchase by U.S. taxpayers who needed to offset their capital gains.

Whether clearly criminal or complex and less clear, all of the cases examined by the Subcommittee demonstrate the need for greater transparency in this secretive offshore world. The bipartisan report issued in connection with today's hearing makes several recommendations to provide light behind the dark shroud of offshore secrecy. Our recommendations would accomplish this by: Tightening SEC and IRS disclosure requirements on offshore trusts and shell corporations in tax and secrecy havens; creating a presumption in U.S. tax, securities, and anti-money-laundering laws that these entities are controlled by any U.S. individuals who have contributed or direct the offshore assets; extending anti-money-laundering laws and the requirements to report suspicious transactions to law enforcement to foreign-based hedge funds that are affiliated with U.S. hedge funds and invest in the United States; and perhaps most important, by sanctioning tax and secrecy havens that do not cooperate with U.S. tax enforcement.

I know this is a long opening statement, but it is a pretty thick report. I look forward to the testimony we will hear at today's hearing. It is imperative that Congress continue to ensure the efficiency and operation of the government and to ensure that honest taxpayers are not asked to carry an unfair and disproportionate burden.

After today's hearing and assessing the testimony, I intend to work with Senator Levin to see what follow-up action we need to take in order to address the problems exposed by this investigation. Stated simply, the abuse of offshore tax havens by U.S. individuals is shifting the tax burden to all of us. I intend to fix this problem.

Last, I want to thank both the Majority and Minority Subcommittee staffs for all their hard work and collaboration over the course of this investigation.

Senator Levin.

#### **OPENING STATEMENT OF SENATOR LEVIN**

Senator LEVIN. Mr. Chairman, thank you for the hearing that you have scheduled for this morning. Thank you for the great support that you and your staff have given to this investigation, which includes the issuance of more than 70 subpoenas, scheduling of more than 80 interviews, a bipartisan 370-page report, and the review of more than 2 million pages of documents.

I believe the findings in this report are explosive. The report blows the lid off tax haven abuses that make use of sham trusts, shell corporations, and fake economic transactions to help some people who have huge assets and income dodge the taxes that they owe to the U.S. Treasury.

Experts estimate that tax haven abuses by individuals cost the U.S. Treasury somewhere between \$40 and \$70 billion every year in taxes that are owed but not collected. There is a large number that applies to the corporations which use tax havens.

Ultimately, as you have said, Mr. Chairman, that tax gap must be made up by average, honest taxpayers whose faith in the fairness of our tax system is eroding when they realize that so many people are dodging their obligations through the use of these kind of tax haven gimmicks.

Our report lays out six case studies illustrating the scope and seriousness of the problem. I will be focusing in my questioning, at least, on two of these particular issues.

The key features of the offshore tax havens are low or no taxes, and a legal system that favors secrecy over transparency. Tax havens sell secrecy to attract business, and they are very successful. About 50 tax havens operate in the world today. These tax havens, in effect, have declared economic war on U.S. taxpayers by giving tax dodgers the means to avoid their tax bills and leave them for others to pay.

These schemes are shrouded in the secrecy of tax havens because they cannot stand the light of day. Trusts and shell corporations established in offshore secrecy jurisdictions operate in a legal black box that allows them to hide assets, mask who controls them, and obscure how their assets are used.

An armada of offshore service providers, lawyers, bankers, brokers, and others then join forces to exploit the black-box secrecy

and help clients skirt U.S. tax, securities, and anti-money-laundering laws. Many of the firms concocting or facilitating these schemes are respected names here in the United States.

Our focus today, again, will be on two different schemes. The first scheme was used to avoid paying taxes on stock option compensation and investment income flowing from it. The second hid income that was earned from capital gains. At its core, each scheme relied on a key deception made possible by tax haven secrecy.

The first case study looks at the tax haven schemes of Sam and Charles Wyly. For 13 years, the Wyls used the black box and its facilitators to direct and enjoy the benefits of hundreds of millions of dollars in stock option income that they sent offshore to supposedly independent entities.

Between 1992 and 2005, Sam and Charles Wyly transferred over 17 million stock options and warrants worth about \$190 million to a complex array of 19 offshore trusts and 39 shell corporations. The 19 offshore trusts were either established by the Wyls or named them and their families as beneficiaries. These trusts owned the 39 shell corporations in the Isle of Man or the Cayman Islands. In return for most of the stock options, the offshore corporations gave the Wyls private annuities designed to make payments starting many years later. The Wyls took the position, on the advice of legal counsel, that because they exchanged their stock options for annuities of equivalent value, they did not have to pay any taxes on the compensation until the annuities were paid out.

In the meantime, the offshore entities began cashing in the stock options. The proceeds were invested in securities, Wyly hedge funds, Wyly businesses, and real estate, as directed by the Wyls. The Subcommittee traced about \$500 million in offshore dollars invested in Wyly business investments, about \$85 million used to acquire or improve real estate used by Wyly family members, and about \$30 million spent on art, furnishings, and jewelry for the personal use of the Wyly family members. In addition, about \$140 million of the offshore dollars went back to the Wyls in the form of loans funneled through a Cayman shell corporation called Security Capital.

This chart sums up the Wyly offshore empire.<sup>1</sup> On the left, it starts with untaxed stock option compensation, most of which—\$124 million—remains untaxed today. It grew with untaxed investment gains. And it provided a source of untaxed, offshore cash for loans or other uses that the Wyls wanted.

The key deception in this scheme is the Wyly claim that the 58 offshore trusts and corporations were independent. Under U.S. tax law, the tax on the income of a truly independent trust is paid by the trustees. But if a U.S. person is the effective owner and controls the trust, then that trust's income is generally taxable to that person.

The claim that the offshore trusts were independent of the Wyls is contradicted by overwhelming evidence. This is not a case where the Wyls handed over their stock options to independent trustees who operated the trusts and then awaited their annuity payments

<sup>1</sup> See Exhibit 1 which appears in the Appendix on page 622.

later on. Instead, for 13 years, the Wyls and their representatives continually told the trusts what to do—when to exercise the stock options, when to sell the shares, and what to do with the money. The Wyls conveyed their directions through so-called trust protectors, individuals selected by the Wyls, who worked for the Wyls, and who were empowered to fire any offshore trustee. The protectors transmitted the Wyls directions to the offshore trustees who consistently carried them out.

The offshore entities exercised options and traded shares from three companies—Michaels Stores, Sterling Software, and Sterling Commerce—where the Wyls were founders and directors. The Wyls, on the advice of counsel, generally did not include the stock holdings of the offshore entities in their SEC filings, claiming again that the offshore entities were independent. When the offshore entities opened securities accounts at Bank of America and were asked to name their beneficial owners as required by new anti-money-laundering laws, they refused to do so, claiming again they were independent. Bank of America allowed the accounts to operate without getting the information required by law.

By promoting the fiction that the trusts were independent, the Wyls participated in a 13-year scam and scheme to circumvent U.S. tax, securities, and anti-money-laundering requirements.

Now, the next case study is called the POINT case, and by contrast, this focuses on one-time abusive tax shelter transactions.

This scheme used the tax haven black box to facilitate the creation of a fake stock portfolio with phantom securities used to generate billions of dollars of fake losses. Once again, the armada was hard at work, generating hefty fees for themselves by designing complex partnership structures, executing transactions, and circulating impenetrable legal opinions to justify the deferral or elimination of taxes owed on \$2 billion in real capital gains.

A Seattle-based securities firm called Quellos designed, promoted, and implemented the tax shelter known as POINT—Personally Optimized Investment Transaction—which it sold to six wealthy clients.

The POINT strategy was designed to be impossible to pierce. Just take a quick glance at that chart.<sup>1</sup> It is a bowl of spaghetti. It may look comical, but the sobering fact is that those six transactions cost the Treasury about \$300 million in lost revenue, which, if these transactions are not reversed, will have to be made up by honest taxpayers.

POINT worked like this. Quellos put together a list of high-tech stocks, together worth about \$9.5 billion, many of which had stock prices that they expected would drop.

The list went to a shell corporation in the Isle of Man called Jackstones. Although Jackstones did not actually own any of the stocks, it conducted a fake stock sale to another shell corporation in the Isle of Man called Barnville. On paper, Barnville paid \$9.5 billion which, of course, it did not have. Barnville then immediately lent the stock back to Jackstones in exchange for the same enormous sum, and the money which did not exist then became the security for the loan of the non-existent stock. Because the two com-

<sup>1</sup> See Exhibit 6 which appears in the Appendix on page 722.

panies did these deals simultaneously, the amounts of stock and cash they owed each other cancelled out. And in a sleight of hand worthy of Houdini, Barnville claimed to be left with a huge paper portfolio. Barnville then picked from its paper portfolio a selection of stocks with the amount of capital losses needed by a client to offset their capital gains and transferred those losses to a trading company owned by the client.

So, to review, a phony Isle of Man corporation sold stock it did not own to another phony Isle of Man corporation for money it did not have. The fake stock was lent back with fake cash as security for repayment of the loan, and the fake loss on the stock price was transferred out to offset real gains. No real economic activity took place, but one critical thing happened: A \$9 billion paper portfolio was created. This paper portfolio originated with Jackstones and Barnville, shell corporations with no employees, no offices, and—listen to this, folks—paid-in capital in each of those two shell corporations of about \$5. They transferred \$9.5 billion in paper stock, paying for it with \$9.5 billion in cash. Two corporations that each had paid in two pounds, about \$5 in capital.

The final step in the POINT scheme was for Barnville to sell the paper losses to wealthy individuals, including Haim Saban and Robert Wood Johnson IV, who are with us this morning. These clients used the paper losses to offset real capital gains. Mr. Saban used POINT to offset about \$1.5 billion in capital gains. Mr. Johnson offset about \$143 million. Together, the fees that they paid to Quellos, the lawyers, the bankers, and others totaled about \$75 million. One more proof that this sordid tale was used to concoct tax losses is the fact that the greater the loss generated for a client, the greater the fees charged by Quellos.

The POINT tax shelter included transactions to create the appearance of a complex investment with real economic substance. In reality, the transactions were expertly designed to remove all risk, using circular transactions that cancelled out or were unwound. A 5-year warrant, for example, which was included in the transactions to produce the illusion of a profit potential, was always terminated before any profits were realized. In a transaction involving Mr. Saban, an \$800 million loan and stock purchase were added to provide a patina of economic substance, but the way the transaction was structured, it could not realize a profit in comparison to or anywhere near the transaction's fees and other costs.

Mr. Saban told the Subcommittee staff that POINT was not sold to him as an investment strategy. He was very straightforward with us. He said it was sold to him as a way to avoid taxes that he otherwise would have had to pay on a big capital gain. In his words, he was promised "tax deferral ad infinitum" on a \$1.5 billion capital gain, and that is the fees that he paid for that tax deferral, ad infinitum.

The key deception in POINT was the fake offshore portfolio that generated fake stock losses sold to partnerships with a false business purpose. The end result was \$2 billion in real and taxable capital gains that were supposedly erased.

This has gone on a long time, I know, Mr. Chairman, and I want to just apologize to you and other Members of the Subcommittee for its length. I will, of course, put the rest of it into the record in

terms of the role of professionals that I believe had blinders on so that they would not see these transactions for what they were. And also, in addition to what you have said about remedies and the actions that we should take, I would agree with you that we must make some major reforms here. We will go into those later on, perhaps at the end of the hearing.

One of the reforms, in addition to the one that you mentioned, which I believe is already the basis of a bill which you and I have introduced, would create a presumption regarding who controls an offshore entity and what purpose it is serving if that entity is located in a jurisdiction deemed to be a tax haven by the U.S. Secretary of the Treasury. Today, the burden is on the government to prove that an individual controls and directs a tax haven trust, or shell corporation. It is time to reverse that presumption when a U.S. taxpayer opens up or controls an offshore entity in a tax haven.

Again, I want to thank you and join you, Mr. Chairman, in thanking our staffs, who have done really the most extraordinary job that I think have ever seen a staff do in addressing the challenge of over 2 million pieces of paper, documents that have come into this Subcommittee and that needed to be reviewed in order that we could get to the point where we are at.

Thank you.

Senator COLEMAN. Thank you, Senator Levin, and your full statement will be entered into the record.

[The prepared statement of Senator Levin follows:]

#### PREPARED STATEMENT OF SENATOR LEVIN

This morning, this Subcommittee is releasing the results of a year-long, bipartisan investigation into tax haven abuses. I want to thank our Chairman Norm Coleman and his staff for the support they have given to this investigation, which included the issuance of more than 70 subpoenas, the scheduling of more than 80 interviews, and the review of more than 2 million pages of documents. I believe the findings are explosive: The report blows the lid off tax haven abuses that make use of sham trusts, shell corporations, and fake economic transactions to help some people dodge taxes owed to the U.S. Treasury.

Experts estimate that tax haven abuses by individuals cost the U.S. Treasury between \$40 billion and \$70 billion every year in taxes that are owed but not collected. Ultimately, that tax gap must be made up by average, honest taxpayers whose faith in the fairness of our tax system is eroding.

Our report lays out six case studies illustrating the scope and seriousness of the problem. Today's hearing focuses on two of them.

#### INSIDE THE BLACK BOX

The key features of offshore tax havens are low or no taxes and a legal system that favors secrecy over transparency. Tax havens sell secrecy to attack business. And they are very successful. About 50 tax havens operate in the world today. Those tax havens have, in effect, declared war on honest U.S. taxpayers, by giving tax dodgers the means to avoid their tax bills and leave them for others to pay.

These schemes are shrouded in the secrecy of tax havens because they can't stand the light of day. Trusts and shell corporations established in offshore secrecy jurisdictions operate in a legal black box that allows them to hide assets, mask who controls them, and obscure how their assets are used.

An armada of "offshore service providers," lawyers, bankers, brokers, and others then joins forces to exploit the black box secrecy and help clients skirt U.S. tax, securities, and anti-money laundering laws. Many of the firms concocting or facilitating these schemes are respected names here in the United States.

Our focus today is on two different schemes. The first scheme was used to avoid paying taxes on stock option compensation and investment income flowing from it.

The second bid income from capital gains. At its core, each scheme relied on a key deception made possible by tax haven secrecy.

#### WYLY CASE STUDY

The first case study looks at the tax haven schemes of Sam and Charles Wyly. For thirteen years, the Wyllys used the black box and its facilitators to direct and enjoy the benefits of hundreds of millions of dollars in stock option income that they sent offshore to supposedly independent entities.

Between 1992 and 2005, Sam and Charles Wyly transferred over 17 million stock options and warrants worth about \$190 million to a complex array of 19 offshore trusts and 39 shell corporations. The 19 offshore trusts were either established by the Wyllys or named them as beneficiaries. These trusts owned the 39 shell corporations in the Isle of Man or the Cayman Islands. In return for most of the stock options, the offshore corporations gave the Wyllys private annuities designed to make payments starting many years later. The Wyllys took the position, on the advice of legal counsel, that because they exchanged their stock options for annuities of equivalent value, they didn't have to pay any taxes on the compensation until the annuities paid out.

In the meantime, the offshore entities began cashing in the stock options. The proceeds were invested in securities. Wyly hedge funds, Wyly businesses, and real estate. The Subcommittee traced about \$500 million in offshore dollars invested in Wyly business investments, about \$85 million used to acquire or improve real estate used by Wyly family members, and about \$30 million spent on art, furnishings, and jewelry for the personal use of Wyly family members. In addition, about \$140 million of the offshore dollars went back to the Wyllys in the form of loans funneled through a Cayman shell corporation called Security Capital.

This chart sums up the Wyly offshore empire. It started with untaxed stock option compensation, most of which—\$124 million—remains untaxed today. It grew with untaxed investment gains. And it provided a ready source of untaxed, offshore cash for loans or other uses the Wyllys wanted.

The key deception in this scheme is the Wyly claim that the 58 offshore trusts and corporations were independent. Under U.S. law, the tax on the income of a truly independent trust is paid by the trustees. But if a U.S. person controls the trust's assets and investments, then the trust's income is generally taxable to that person.

The claim that the offshore trusts were independent of the Wyllys is contradicted by overwhelming evidence. This is not a case where the Wyllys handed over their stock options and awaited the annuity payments, while independent trustees operated the trusts. Instead, for thirteen years, the Wyllys and their representatives continually told the trusts what to do—when to exercise the stock options, when to sell the shares, and what to do with the money. The Wyllys conveyed their directions through so-called "trust protectors," individuals selected by the Wyllys, who worked for the Wyllys, and who were empowered to fire any offshore trustee. The protectors transmitted the Wyly directions to the offshore trustees who consistently carried them out.

The offshore entities exercised options and traded shares from three companies, Michaels Stores Inc., Sterling Software Inc. and Sterling Commerce Inc., where the Wyllys were founders and directors. The Wyllys, on the advice of counsel, generally did not include the stock holdings of the offshore entities in their SEC filings, claiming, again, that the offshore entities were independent. When the offshore entities opened securities accounts at Bank of America and were asked to name their beneficial owners as required by new U.S. anti-money laundering laws, they refused to do so, claiming again they were independent. Bank of America allowed the accounts to operate without getting the information required by law.

By promoting the fiction that the trusts were independent, the Wyllys participated in a 13-year sham to circumvent U.S. tax, securities, and anti-money laundering requirements.

#### POINT CASE STUDY

The Wyly case study traces the building of an offshore empire over 13 years. The next case study, by contrast, focuses on one-time, abusive tax shelter transactions.

This scheme used the tax haven black box to facilitate the creation of a fake stock portfolio with phantom securities used to generate billions of dollars of fake losses. Once again, the armada was hard at work, generating hefty fees for themselves by designing complex partnership structures, circular transactions, and impenetrable legal opinions to justify the deferral or elimination of taxes owed on \$2 billion in real capital gains.



A Seattle-based securities firm called Quellos designed, promoted, and implemented the tax shelter known as POINT—Personally Optimized Investment Transaction—which it sold to five wealthy clients in six separate transactions.

The POINT strategy was designed to be impossible to pierce. Take a look at this chart. It's a bowl of spaghetti and may look comical, but the sobering fact is that these six transactions cost the Treasury about \$300 million in lost revenue—revenue which, if these transactions aren't reversed, will have to be made up by honest taxpayers.

POINT worked like this. Quellos put together a list of high tech stocks, together worth about \$9.5 billion, many of which had stock prices that were expected to drop. The list went to a shell corporation in the Isle of Man called Jackstones. Although Jackstones did not actually own any of the stocks, it conducted a fake stock sale to another shell corporation called Barnville. On paper, Barnville paid \$9.5 billion which, of course, it didn't have. Barnville then immediately lent the stock back to Jackstones in exchange for the same enormous sum, and the money which didn't exist then became security for the loan of the non-existent stock. Because the two companies did these deals simultaneously, the amounts of stock and cash they owed each other cancelled out. In a sleight of hand worthy of Houdini, Barnville was left with a huge paper portfolio. Barnville then picked from its paper portfolio a selection of stocks with the amount of capital losses needed by a client to offset their capital gains, and transferred those losses to a trading partnership owned by the client.

So, to review, a phony Isle of Man corporation sold stock it didn't own to another phony Isle of Man corporation for money it didn't have. The fake stock was lent back with fake cash as security for repayment of the loan, and the fake loss on the stock price was transferred out to offset real gains. No real economic activity took place, but one critical thing happened—a \$9 billion paper portfolio was created. This paper portfolio originated with Jackstones and Barnville, shell operations with no employees, no offices, and paid-in capital of €2—that's about \$5 each.

The final step in the POINT scheme was for Barnville to sell the paper losses to wealthy individuals, including Haim Saban and Robert Wood Johnson IV. These clients used the paper losses to offset real capital gains. Mr. Saban used POINT to offset about \$1.5 billion in capital gains; Mr. Johnson offset about \$143 million. Together, the fees they paid to Quellos, the lawyers, the bankers, and others totaled about \$75 million. One more proof that this sordid tale was used to concoct tax losses is the fact that the greater the paper loss generated for a client, the greater the fees charged by Quellos.

The POINT tax shelter included transactions to create the appearance of a complex investment with real economic substance. In reality, the transactions were expertly designed to remove all risk, using circular transactions that cancelled out or were unwound. A 5-year warrant, for example, which was included in the transactions to produce the illusion of a profit potential, was always terminated before any profits were realized. In a transaction involving Mr. Saban, an \$800 million loan and stock purchase were added to provide a patina of economic substance, but the way the transaction was structured, it could not realize a profit in comparison to the transaction's fees and other costs.<sup>u</sup> For example, the cost of a collar that capped possible profits at 8% of the total investment reduced a \$130 million profit to \$13 million, which was then dwarfed by fees totaling \$53 million.

Mr. Saban told the Subcommittee staff that POINT was not sold to him as an investment strategy; it was sold to him as a way to avoid taxes that he otherwise would have had to pay on a big capital gain. In his words, he was promised "tax deferral ad infinitum" on a \$1.5 billion capital gain, and that's what he paid for.

The key deception in POINT was the fake offshore portfolio that generated fake stock losses sold to partnerships with a false business purpose. The end result was \$2 billion in real and taxable capital gains that were supposedly erased.

#### PROFESSIONAL BLINDERS

One of the most disturbing aspects of the POINT scheme was the degree to which reputable professionals aided and abetted this abusive tax shelter. Each of the facilitators—the lawyers, bankers, and brokers—played critical roles, pulled in hefty fees, but then acted surprised at what the Subcommittee found when it lifted the lid off the black box. Most claimed they had been unaware that no securities had actually been bought or sold, and no real losses generated. No one knew who was behind the tax haven corporations with the \$9 billion portfolio, Jackstones and Barnville. The professionals hid behind shaky legal opinions to justify their roles and donned blinders to block out indicators of the sordid business they were in-

volved in. Each participant essentially told the Subcommittee: “I was only responsible for my little piece of this. I didn’t know the other parts. It’s not my fault.”

- Quellos, the architect of the sham, says it doesn’t know who owns Barnville and Jackstones.
- EURAM, the UK company that served as the agent in all the deals between Barnville and Jackstones and was paid millions in fees, says it doesn’t know who is behind the shell corporations.
- HSBC, the global bank that loaned hundreds of millions of dollars to fuel some of these transactions and knew it was financing deals set up to avoid taxes, says it didn’t know who Barnville and Jackstones were, didn’t know about key steps in the transactions, and relied on the tax opinions provided by legal counsel.
- The Cravath Swaine partner who put the law firm’s seal of approval on POINT and made \$125,000 in fees, says he didn’t know about the fake trades or the role of Barnville and Jackstones.
- Bryan Cave, another law firm that put its seal of approval on POINT and made over \$1 million in fees, disavows knowledge of how the paper portfolio was formed and of the corporations that formed it.

Could it be true that the banks and brokers and lawyers who participated in POINT didn’t know what they were involved with? Or is it that they didn’t want to know?

#### CONCLUSION

The Wyly chart and the POINT chart say it all. They show how broken the system is, and how serious the tax haven abuses have become.

These tax haven abuses are eating away at the fabric of the U.S. tax system, and undermining U.S. laws intended to safeguard our capital markets and financial systems from financial crime. It is long, long past time for our country to shut down their use by U.S. citizens.

One of the reforms recommended in our report would address the key deceptions in the two case studies examined here: the fake economic activity offshore and the fake independence of the offshore trusts and corporations.

This reform would create a presumption regarding who controls an offshore entity and what purpose it is serving, if that entity is located in a jurisdiction deemed to be a tax haven by the U.S. Treasury Secretary. Today, the government has the burden of proving that an individual controls a tax haven trust or shell corporation. It is time to reverse that presumption.

In other words, if you create a trust or corporation in a tax haven jurisdiction, send it assets, or benefit from its actions, Congress should reform the tax law to presume that you control it, that any income is your income, and treat that income and that entity accordingly for tax, securities, and money laundering purposes. An individual could still establish that an offshore entity was independent, but the burden of proof would be on that individual, not the government.

Congress should also enact S. 1565, the Tax Shelter and Tax Haven Reform Act that Senator Coleman and I introduced last year which, among other provisions, would authorize the Treasury Secretary to issue a list of tax havens that don’t cooperate with U.S. tax enforcement and eliminate U.S. tax benefits for income in those jurisdictions. The ability to penalize uncooperative tax havens would hand our government a mighty club to combat tax haven abuses.

This hearing and the report we are releasing today shine a needed spotlight into the black box of offshore tax havens. It reveals a system that is corrupt and corrupting. Honest Americans are footing the bill for tax haven abuses, and we need to shut those abuses down.

Thank you, Mr. Chairman, for the important role you and your staff have played in this matter. Bipartisanship has been the hallmark of this Subcommittee, and you are helping to preserve that critically important tradition. I look forward to the testimony of our witnesses.

#### OPENING STATEMENT OF CHAIRMAN COLLINS

Chairman COLLINS. Thank you, Mr. Chairman. I can take a hint, and I will put my statement in the record.

Let me just make one comment, and that is, no one enjoys paying taxes, but we understand our obligation to do so. And those who fail to pay their fair share of taxes by engaging in sham trans-

actions or other abusive practices undermine the fairness of our tax system and the willingness of the average taxpayer to comply voluntarily. And that is why I think this exhaustive investigation that you and Senator Levin have conducted is so important. It is just plain wrong when more of the burden is put on ethical, law-abiding taxpayers because of the loss of tens of billions of dollars due to these offshore tax scams and schemes.

So I congratulate you for this exhaustive investigation. Senator Levin, you beat the record of the Katrina investigation on the number of pages reviewed, but not on the number of witnesses interviewed. But I do congratulate you. This is very important work.

Thank you.

Senator COLEMAN. Thank you, Senator Collins. Your entire statement will be made part of the record.

[The prepared statement of Chairman Collins follows:]

#### PREPARED STATEMENT OF SENATOR COLLINS

Good Morning. Let me begin by thanking Senator Coleman and Senator Levin for investigating the use of offshore tax scams to evade compliance with United States tax, securities, and money laundering laws. This hearing will explore a problem that is costing the federal government billions of dollars in revenue each year. Shutting down these overseas tax scams is a matter of fundamental fairness for our tax system.

There is nothing illegal or unethical about legitimate tax planning. Millions of Americans do it every year when they pay their taxes and plan their finances. However, when individuals try to avoid paying taxes by engaging in sham transactions, in financial transactions undertaken to conceal their true purpose, or in business deals whose only purpose is to hide the expatriation and repatriation of taxable assets, they may be crossing the line between proper tax planning and abusive tax sheltering.

One of the most disturbing aspects of this problem is the fact that legitimate, respected banks, attorneys, and investment advisers appear to have helped facilitate or promote these abusive transactions. The fact is, some of these transactions are so complicated that they require a small army of highly trained professionals to plan and execute. They are often hidden behind a curtain of secrecy in overseas jurisdictions, concealed from the view of the authorities in this country. This studied obfuscation makes exposing these transactions extraordinarily difficult.

Unfortunately, problems like this are not new. In 2005 the Government Accountability Office placed the federal government's enforcement of its tax laws on its "High Risk List" of major challenges. In fact, this area has been included in every High Risk List going back to the first list in 1990.

This February, the Internal Revenue Service listed the use of offshore transactions to illegally hide income on its "Dirty Dozen" list of notorious tax scams. I understand that IRS Commissioner Mark Everson will be testifying here today. I look forward to hearing what the agency he leads is doing to meet this challenge.

The bottom line is that the use of these schemes to evade taxes places more of a burden on ethical, law-abiding taxpayers. This is just plain wrong. It is one thing to hire someone to help you understand your legal options. It is another to hire someone to help you conceal your income through sham transactions to avoid paying your lawful share of taxes.

No one likes paying taxes, but we understand our obligation to do so. Those who fail to pay their fair share of taxes by engaging in sham transactions or other abusive practices undermine the fairness of our tax system and the willingness of the average taxpayer to comply voluntarily. Thank you, Mr. Chairman.

Senator COLEMAN. Senator Lautenberg.

#### OPENING STATEMENT OF SENATOR LAUTENBERG

Senator LAUTENBERG. Mr. Chairman, I commend you and Senator Levin for your thorough work in this area, and to note the shock that goes across the country when we look at something like this. Every major paper has got a front-page story about this, front

page of the Business Section, front page of the *Wall Street Journal*, front page of the *Washington Post*. And you see it all over.

I would only ask for a little more time because this report was hard to lift, no less to read, and we got it last night, and it was hard to keep from dozing off as I got to page 4, I must tell you. [Laughter.]

But on a very serious note, the suggestion that people who made this kind of money were naive and did not ask the critical question, perhaps there will be no finding of violation of law here, but where is the morality that should accompany the kind of successes that have been realized in this country.

I come out of the business world, and I knew the Wylys in the start of their days. I think they were failing then. But the fact of the matter is that they are not here, Mr. Chairman, and I do not understand why they are not here to sit at that table and be a witness and why we haven't got them here in front of us to swear to the honesty of their statements. It is outrageous that we do not have those two here as witnesses.

So it is discouraging when the United States is in the financial condition that it is, with millions of people without health care and our soldiers in Iraq and families having to make up for the loss not only of their lives and their family relationships, but the income that we are casually—and I say that intentionally—casually ignoring this opportunity to capture a lot, lot more funding for our Treasury. In these cases, the numbers are so high that they stagger the imagination.

But right now what IRS has decided to do is move people out of the estate tax enforcement section to a different section so that they can audit casual returns.

If we had been a little bit better at the awareness factor and made these discoveries, I think that we could have increased our revenue a lot better. And I ask those who made the money and those who participated in this scheme, whether it is as a beneficiary or as a professional consultant, how they feel about their lives in America. Are their lives made better because they beat the rap, so to speak? I do not think so.

So, Mr. Chairman, once again I thank you, and I thank Senator Levin for the thoroughness and for the exposure of this problem. And I hope we carry it to its fullest extent.

Unfortunately, I would please ask, the next time when we are going to get a report like this, which is critical, and understanding the problem, give us a little more time, please, maybe two nights.

Thank you very much.

Senator COLEMAN. I appreciate your concerns. I think it should be noted, because it is a matter of public record, that the Wylys are subject to an ongoing investigation. We were asked by the Department of Justice not to compel their attendance here because of the impact that compelling their testimony may have had on the active, ongoing investigation. So that is why that decision was made.

Senator LEVIN. Mr. Chairman. I think also that we did receive a letter from them indicating that they would assert their constitu-

tional rights. If that is true, I would ask that letter be made part of the record.<sup>1</sup>

Senator LAUTENBERG. Constitutional right for?

Senator LEVIN. Not to testify under the Fifth Amendment.

Senator COLEMAN. It shall be made part of the record. Thank you, Senator Levin.

#### **OPENING STATEMENT OF SENATOR STEVENS**

Senator STEVENS. I congratulate both of you, and I am here to hear some witnesses, I hope.

Senator COLEMAN. Thank you, Senator Stevens.

I think that is a hint, Senator Dayton.

#### **OPENING STATEMENT OF SENATOR DAYTON**

Senator DAYTON. That is a strong hint. I will just join with my colleagues in thanking the Chairman and the Ranking Member for their excellent work, and their staffs, and I share the feelings and the outrage that Senator Lautenberg so well expressed. So I associate myself with his remarks, and I agree, let's get on to the witnesses.

Senator COLEMAN. Thank you, Senator Dayton.

I would now like to welcome our first witness to this morning's important hearing. It is my pleasure to introduce the Hon. Mark Everson, the Commissioner of the Internal Revenue Service.

Commissioner, I appreciate your attendance at today's hearing and look forward to your testimony and perspective on the use of offshore secrecy havens to hide assets from U.S. taxation.

This is the fifth time you have testified before this Subcommittee in the 3 years I have been Chairman, so I think you know the drill. Before we begin, pursuant to Rule VI, all witnesses who testify before the Subcommittee are required to be sworn. At this time, I would ask you to please stand, raise your right hand. Do you swear that the testimony you are about to give before this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. EVERSON. I do.

Senator COLEMAN. Thank you. Commissioner Everson, we will be using the timing system. Again, you are familiar with it. The amber light will come on before the red light. If you can at that point conclude your testimony, your written testimony will be printed in the record in its entirety, and we ask that you limit your oral testimony to no more than 5 minutes.

You may proceed, Commissioner.

#### **TESTIMONY OF HON. MARK EVERSON,<sup>2</sup> COMMISSIONER, INTERNAL REVENUE SERVICE, WASHINGTON, DC**

Mr. EVERSON. Chairman Collins, Chairman Coleman, Senator Levin, and Members of the Subcommittee, thank you for inviting me to discuss offshore abuses. As always, I appreciate the opportunity to testify before the Subcommittee. In particular, I appreciate your strong support for strengthening the integrity of our tax

<sup>1</sup> See Exhibit 64 which appears in the Appendix on page 1310.

<sup>2</sup> The prepared statement of Mr. Everson with an attachment appears in the Appendix on page 99.

system and for enhanced enforcement. This Subcommittee has shown impressive leadership in combating abusive tax shelters and those who play fast and loose with the Tax Code. I know that you have a full morning, so I shall be brief.

U.S. tax administration is complicated by the rapid pace at which our overall economy is becoming more global. A growing percentage of large and mid-sized business tax filings are from multinational companies that have a myriad of subsidiaries, affiliates and partnerships operating within an enterprise structure where the ultimate parent may turn out to be foreign or domestic. In addition, a growing number of U.S. businesses acquire raw materials, inventory, financing, products, and services, some unthinkable just a few years ago, from foreign businesses.

These events are natural outcomes of an increasingly global economy, and businesses have the right to optimize their global structures. Nonetheless, the complexities of globalization and cross-border activity continue to challenge U.S. tax administration. With multiple domestic and global tiered entities, it is often difficult to determine the full scope and resulting tax impact of a single transaction or series of transactions. Complexities of globalization and cross-border activity create opportunities for aggressive tax planning, and even outright evasion.

It is not just large corporations taking advantage of this globalization. Wealthy individuals often seek ways to shelter income by moving it offshore or participating in tax shelters, some organized by unscrupulous promoters who operate under the veneer of legitimacy in the shadows of the global economy.

This trend toward ever greater globalization makes our job at the IRS more challenging each year and is compounded by the complexity of the Tax Code itself and by the relative lack of transparency in the transactions that businesses and individuals often conduct offshore. And not only are the transactions themselves often intentionally designed or carried out in a manner to be opaque, but the taxpayers engaging in the transaction and their roles are often difficult to identify.

This chart depicts the compliance risk associated with offshore activity.<sup>1</sup> On the left we have businesses, and on the right we have individuals, although there is some overlapping in the vehicles that are used. What this indicates is that the compliance risk increases as the transparency diminishes.

I do not want to suggest that all of the activities on this chart are bad. In many instances, they can be entirely proper. But they run from things where we see technical problems, taking advantage of that complexity in the Code to structure more tax credit generated transactions or hybrid instruments that can be set up where you are paying taxes neither in this country nor another country because of the difference between debt and equity treatment, to what you are talking about today, where there is outright hiding of the ball.

<sup>1</sup> Chart attached to prepared testimony of Commissioner Mark Everson which appears in the Appendix on page 110.

This is a particular problem because, as you get down here where there is no transparency, we have real difficulties in finding out what is going on.

At the IRS we have a variety of initiatives to address these challenges. In particular, I would note steps we are taking to increase our cooperation with other international tax administrations. Just this year, we have formed a new grouping of tax commissioners from ten countries, including many of the traditional economic powers as well as for the first time, China and India. Our conversations are noticeably enforcement oriented. Further, we are seeing positive results from the Washington-based Joint International Tax Shelter Information Center, where specialists from Australia, Canada, the United Kingdom, and the United States work side by side to track new cross-border schemes.

Additionally, I would share with the Subcommittee that I have just been elected Chair of the OECD Forum on Tax Administration. In September, I will be chairing a forum meeting of some 40 tax administrators in Seoul, Korea, where the focus of our agenda will also be on international enforcement.

Many of my counterparts in the international tax community have expressed the need for greater cooperation to fight the proliferation of abusive tax practices. Still, in this area of our activities, where some businesses and individuals do whatever they can to hide within the seams of the Internal Revenue Code or to escape IRS notice, our challenges are acute and ever growing. Offshore abuses are a real problem, one which merits all of our concern.

I appreciate your efforts, and I look forward to the results of your inquiry. Thank you.

Senator COLEMAN. Thank you very much, Commissioner.

Is there any way to give us an estimate on the extent of the problem? The report identifies just two transactions in which there is \$300 million of potential tax liability that was not collected. One of the witnesses—I think Professor Avi-Yonah, who testifies on the next panel—has thrown out a figure of approximately \$50 billion that is lost each year due to offshore tax shelters. Perhaps you can verify this. I believe a few years ago the IRS recovered \$3.2 billion in taxes from one Cayman bank with about 1,100 depositors.

First of all, could you verify whether that is an accurate statement?

Mr. EVERSON. Well, I do not want to comment on any particular matter because of the confidentiality standards, but I can confirm that settlements, when we have pursued entities working on tax shelters, abusive shelters, have exceeded \$1 billion in some instances.

Senator COLEMAN. And the overall extent of the problem, in your best guess?

Mr. EVERSON. What I would say, sir, is that it runs into the tens of billions of dollars each year. Again, that is through a combination of what I would call technical abuses and then what you really are pursuing today, the outright hiding the ball and what reaches criminal activity.

Senator COLEMAN. You used the phrase “relative lack of transparency” in these offshore activities. The bottom line is in some

cases it is difficult, if not impossible, to find out who is actually controlling an offshore trust. Is that correct?

Mr. EVERSON. I think that is correct. As you both indicated in your statements, the control is nominal; it is not real.

Senator COLEMAN. So, in other words, what you have is an individual who can create a trust. They have, of course, the trustees, who operate perhaps in the Isle of Man and the Caymans, or somewhere like that, and then trust protectors who are, in effect, often the individual's person. The trust protectors then tell the trusts what to do, and the trust protectors are often told by the grantor what to do. Is that a fair summary of what you have encountered?

Mr. EVERSON. I think what you see is you see two things: An ever more complex, as the charts indicate, series of transactions and also of people and relationships that oversee those transactions. So that unraveling this takes a lot of effort—and a lot of time, I might add.

Senator COLEMAN. What kind of tools do you have today to unravel that? And perhaps the more important question is, What kind of tools do you need to do that job?

Mr. EVERSON. Well, I would suggest to you we have a lot of tools. We have many good people who are working on this. We have a lot of information that we have in this country. But the degree to which the secrecy laws that have been mentioned are in place, that presents difficulties.

Under Secretary O'Neill, agreements were reached with some of these countries to share information. Those agreements are just now taking effect, so it will be a little bit of time before we see how well they work. Oftentimes, however, the agreements, they do not run past the provision of information to actually helping us collect money. Let's suppose we make an assessment. There is nothing in there that would help us get the money from that tax haven country, even if we got the information and then were able to make the case that it should be taxed.

Senator COLEMAN. But help me on the transparency issue, because it is my sense it kind of goes to the heart of this.

Mr. EVERSON. Yes.

Senator COLEMAN. Is there insider trading? You do not know. You could have somebody who has a high percentage of shares in a particular corporation, but you do not know who is actually controlling these shares. It is not your issue, but the SEC, they have no knowledge. How do you cut through the veil of secrecy here?

Mr. EVERSON. Well, it depends. On the corporate side, we have something called the M3, which affords a reconciliation between the book income, which would be picking up a lot of the income, obviously, and the taxable income, where the company is trying to minimize that income. I have testified about this before at Finance. One of the real problems, we think, that exists on the corporate side is the difference between the system where companies want to maximize book earnings to drive shareholder price, and then minimize taxable earnings. To the extent that there is greater transparency of those differences, which I favor, I think that will help governance.

On the individual side, there is a basic issue of honesty. What you, Senator Levin, and Senator Lautenberg have talked about is



that these are people, vastly wealthy, who do not need the money, who ought to know better and do know better in many instances. So they aren't filling out the forms that indicate the bank accounts—people are supposed to fill out forms when they have foreign bank accounts—but they are not doing that in all instances because that starts to unravel the whole scheme.

Senator COLEMAN. How important a priority is this for the Internal Revenue Service to go after the tax liability of folks involved in offshore activities?

Mr. EVERSON. This is a very important priority for us—the abusive tax area in general. I think you know that the centerpiece of our efforts over the 3-plus years of my tenure has been to increase our audits of high-income individuals and corporations. We have done that. And where we work and focus on the abusive transactions, a big chunk of that is in the offshore area.

Senator COLEMAN. In terms of the countries, the places that provide a haven for this, what kind of sanctions, what kind of pressure can we put on them to be more cooperative so we can pierce this shroud that now covers these transactions?

Mr. EVERSON. Well, I think a lot comes through our international relations and trying to increase cooperation of other countries.

Part of the difficulty here is that it is not all black and white. There are countries, low-tax countries, commonly seen as tax havens, where there are a lot of economic and real business activities that take place.

So where you draw this line, you are talking about a presumption that it is a tax avoidance transaction, it is a hard thing to do. So we would need to carefully, I think, have a discussion on what to do.

What I would suggest to you is that the most profitable avenue of this is greater scrutiny of the professions and standards for the professions, and perhaps an opinion should not provide protection against penalties for somebody if he or she is operating in a tax haven.

Senator COLEMAN. I appreciate the recommendation, but the ability to distinguish between what is legitimate asset protection versus efforts to defraud the U.S. Government, to avoid paying taxes without a legitimate basis, or to operate through sham transactions, is limited by lack of transparency. We do not know at this point who is controlling, or who owns the assets.

Mr. EVERSON. Yes.

Senator COLEMAN. If you could cut through that, it would at least allow us then to have the discussion that you said we should have.

Mr. EVERSON. Yes, I agree.

Senator COLEMAN. We will have a lot more to talk about, Commissioner. Let me just ask this very quickly: The IRS went through a period of time where there was concern about abusive enforcement, and in many ways the IRS was cut back. And you have been before us a number of times, and we have identified areas where people are clearly defrauding the Federal Government of resources.

If you were to get more resources, one of the concerns would be to make offshore abuses a priority. Is there a way for you to actually prioritize and say we are going to go after these high-net-worth

folks, we are going to go after these offshore activities with additional enforcement dollars?

Mr. EVERSON. There is, and we have asked for more money. The Senate has provided thus far good funding for this. The House has not. I am sure Senator Lautenberg will come back with the estate tax question. But what we are trying to do with the reallocation of the resources here is—these resources from drawing down the estate tax people because the volume of returns has gone down by some 70 percent, we would put them, Senator, in just this area—I think you used the words “casual returns.” That is not the intent. They would be used for abusive transactions and just this kind of work that we are talking about today, people who are generating a million dollars or more of income on their individual returns, income returns.

Senator COLEMAN. Thank you, Commissioner. Senator Levin.

Senator LEVIN. Thank you.

Commissioner, you made a reference about where control is nominal and not real. You were referring, I believe, to the trusts. Is that correct?

Mr. EVERSON. Yes. That takes place in a series of different kinds of transactions where there would be a purported economic viability or a real substance to the transaction or actually there is no tax that is going to come because of the trust, as you are indicating, presumably because somebody else is calling the shots. But, with a lot of these offshore trusts in their worst elements, that does not take place, as you have indicated.

Senator LEVIN. And who is in those worst elements calling the shots?

Mr. EVERSON. I think the people who are benefitting from—when you unwind the transaction, it is the people who have the money or the options or the shares, whatever it was that was of value to begin within.

Senator LEVIN. That transferred those to the trust?

Mr. EVERSON. In many instances, yes, sir. That would be our concern.

Senator LEVIN. Right, and the concern is then in those cases that the control of that trust by the trustees is nominal. They are the nominal trustees, but the real control in that grouping is by the people who put the money or the asset into the trust to begin with.

Mr. EVERSON. That is exactly right. There are two questions. Does the transaction itself work through all the complexity? And then is it real as purported on paper? And what you are getting to, it is not real because nothing really happened. The same people are still in charge.

Senator LEVIN. Now, the amount of effort that you are putting in to crack the secrecy walls that surround these jurisdictions, when you are auditing returns or in your enforcement division, how would you compare that effort? What do you need and what are you getting to mount that effort?

Mr. EVERSON. Well, abusive transactions overall are still a relatively small portion of our revenue agent work on individuals. It is something like one in six, maybe, of all the efforts we make are in that area.

Now, there has been a much greater focus, as you know from our work on Son of Boss when we worked with the Subcommittee, on other areas, stock—we had a stock options settlement agreement. But more resources are definitely needed here. But, again, the real answer is making sure that the professions are not providing lousy advice and that we have a return to integrity in the professions, as you indicated.

Senator LEVIN. Yes, well, we all would agree that is important. But in terms of resources being needed, are more resources needed in this enforcement area?

Mr. EVERSON. I can always use more resources on this, sir.

Senator LEVIN. Have you asked for them?

Mr. EVERSON. Yes.

Senator LEVIN. Can you give us some idea as to what could be useful in this area, what you believe? Would it be a 50-percent increase? Give us some flavor here of what you believe you could usefully use?

Mr. EVERSON. I would want to reflect on that, sir. As you know, within the Executive Branch, those conversations run through OMB where a series of weighting factors take place.

Let me suggest another thing that could be very helpful: Third-party reporting. This Subcommittee knows—and, in fact, going back to the work you have done on contractors, government contractors, the Congress just passed third-party reporting and, in fact, withholding on some government contractors, much along the lines of what you have suggested.

I would draw to your attention in this area of transparency that the Administration does have before the Congress some proposals for increased third-party reporting, most notably for credit card issuers, that will help not in this offshore area, but very much in the under reporting of income.

So if we are going to work on this tax gap and on the transparency issue, we need to look at reporting, not just only resources.

Senator LEVIN. You talked in your testimony about the question of where the real control is on a foreign entity, particularly in a tax haven. Right now, because of the secrecy laws of those jurisdictions, it is very difficult, as we can see just from the effort we had to put forth to get to where we are, to crack that veil of secrecy.

Would you work with this Subcommittee in drafting or considering legislation which would create a presumption, which would be rebuttable, that in a tax haven, if you create a trust, that there is a presumption in a tax haven, as identified by the Secretary of Treasury, that control remains in the person who put the asset into the trust?

Mr. EVERSON. Certainly we will consider that, sir. You mentioned it yesterday when we chatted on the phone, and I have sort of reflected on that, and that is how I came to this point of maybe it would be better to attack this, because there are many things that can be legitimate in these countries. And I do not want to tar everybody with this broad brush. But maybe what we ought to do is think about the protections that are afforded from penalties by the legal opinion. If the legal opinion is really at issue here, maybe a starting point would be to take away the penalty protection, which would get you, I would think, a lot of what you are looking

at, because in these instances, they are oftentimes relying on a lot of paperwork and opinions that are put together by, as you have indicated, leading law firms many times.

Senator LEVIN. Thank you, Mr. Commissioner. Thank you, Mr. Chairman.

Senator COLEMAN. Thank you, Senator Levin. Senator Collins.

Chairman COLLINS. Thank you, Mr. Chairman.

Mr. Commissioner, unfortunately, the problem of the use of these offshore tax havens is not a new one. The Government Accountability Office has placed the Federal Government's enforcement of its tax laws on its high-risk list, going back to 1990, the very first year that it comes out, and it was repeated most recently last year.

So it is troubling that the issue of tax evasion has been with us for so long, and what has happened is over the years the schemes have grown ever more complex, which means that the Federal Government is losing ever more dollars.

The GAO has discussed three general strategies for reducing the tax gap. First, GAO has suggested that we need to greatly simplify the Tax Code. Second, the GAO has recommended providing the IRS with additional enforcement authority and tools. And, third—and you have just had this exchange with Senator Levin—GAO has recommended devoting additional resources to enforcing existing tax laws.

Looking at those three strategies, where do you think our emphasis should be? What do you think would really make the difference if we want to crack down once and for all on this long-standing problem?

Mr. EVERSON. Well, Senator, I think we need to do all of those things, and I think we also do need to take a serious look, again, at third-party reporting as we go down the road, because we know where there is third-party reporting, there is increased compliance. I will give you the simplest example.

In 1986, the last real reform, it was mandated that the Social Security number of dependents be put on a 1040. The next year 5 million dependents vanished. So third-party reporting or reporting works. People do not cheat on their wages. There is only a 1-percent noncompliance rate there as opposed to unreported business income, which is more like a 50-percent problem.

So I would extend your list to include a careful look at third-party reporting. But GAO is right, all three of those areas are terribly important. In particular, I would say simplification of the Code. The other thing I would say is what the Congress does is it constantly changes the Code. An environment of stability would help both compliance through better understanding and also would help us in terms of getting after those who do not comply.

Chairman COLLINS. Commissioner, in February, the IRS announced its "Dirty Dozen" list of the most notorious tax scams, and on this list was the use of offshore transactions to avoid U.S. taxes by hiding income offshore. Some of the other dirty dozen tax scams included the misuse of trusts and the abuse of charitable organizations and deductions.

I am trying to get a sense of the relative problems of the dirty dozen. How widespread is the abuse of offshore transactions rel-

ative to the other tax schemes that you listed as being particular problems?

Mr. EVERSON. Right. Let me say first that Americans, by and large, are compliant. We have a great record in this country. The vast majority of Americans pay their taxes honestly and accurately. I do not think that is changing. What I think is changing is that in areas like this, you have increasing opportunism because of the changes in the global economy and the changes in technology.

One thing that the Subcommittee report draws out that has not been mentioned thus far is the fact that some of this is migrating to less well-to-do taxpayers through things like advertisements in airline magazines. This is not only about the super-rich. This is also about preying on people who are of lesser means.

So I do think, particularly for individuals, this is an area of growing concern.

Chairman COLLINS. Thank you. Thank you, Mr. Chairman.

Senator COLEMAN. Thank you, Senator Collins. Senator Dayton.

Senator DAYTON. Thank you, Mr. Chairman.

Commissioner, as you know, it is very hard to run an Executive Branch agency from the Legislative Branch.

Mr. EVERSON. That does not stop some Senators, sir.

Senator DAYTON. I realize that. And when they fail, it gets even more tempting, and I am not referring to your agency specifically, but there is that tendency when there are these kinds of egregious problems.

You say that tax evasion is not a problem, but I believe the figure cited is some \$300 billion a year that is not collected that is owed?

Mr. EVERSON. Sir, I did not say it is not a problem. What I said is we have every right to be proud of our system because the vast majority of Americans pay honestly and accurately.

Senator DAYTON. Well, I would agree with that, and I think even more so given that your agency has really had, as others have said and I think you have acknowledged, so many of its resources taken away from it. And I think if we are looking at culprits here, as we should, Congress—and I would say it is previous Congresses because I am not aware of this Congress doing anything along those lines. But it has systematically cut back on your capability, and so the fact that so many Americans do pay their taxes from all income brackets, with the increased likelihood that they will not be audited no matter what they do, you are right, is a credit to the system. But that is still a very significant figure, and when you look at the deficits we are facing now chronically, that is money that would be—and you are agreeing. We are in agreement on that.

Mr. EVERSON. Sir, I spent a lot of time arguing for reducing the tax gap. We are on the same side.

Senator DAYTON. I realize your hands are bound by the Office of Management and Budget and those deliberations and the like. But when we read the report last week, that almost half of your estate tax lawyers and 17 of the support staff are going to be cut, according to one report, six of the IRS lawyers are likely to be laid off, acknowledge that the cuts were simply the latest moves behind the scenes at the IRS to protect people with political connections and complex tax avoidance schemes from detailed audits.

Could you comment on that, please?

Mr. EVERSON. Yes, I think that is garbage. That is total garbage. I run a clean agency. The Chairman and Senator Levin would both agree, I would hope, on that. There are two political appointees there. There is no politics in this at all, and I find that assertion offensive. The number of estate tax returns that have been filed is going down by 70 percent. Any sane businessman would adjust his activities. We will take those resources and put them into things like what we are talking about today.

Let me make one other point. The hourly rate of return on work like the abusive tax transactions is double the rate of return on the smaller estates. So it makes good sense to do it, and until the Congress gives me the resources that I ask for, I have got to do things like this to make it work, sir.

Senator DAYTON. And I think this would be very helpful. What resources, additional resources, do you need either that you have asked for here to date or that you have not been able to that you do need? I think Members of this Subcommittee on both sides are willing, are desirous to provide what you need. It is very hard to find out, often, when this gets filtered through OMB.

Mr. EVERSON. Sure. And I hope that what will happen, sir—and I do not mean to get mad at you, but I am mad at the assertion that was made.

Senator DAYTON. I have people mad at me all the time. [Laughter.]

Almost as many as mad at you.

Mr. EVERSON. Almost—well, I am not sure.

But what you can do right here and now is make sure we get our funding that is in the 2007 request, because as I indicated, the House has cut that request by some \$100 or \$110 million, and that will hurt us and result in layoffs. The Senate right now has full funding. It has topped it up I believe even just a little bit more. So that would be the first request I would make, sir.

Senator DAYTON. All right. That is a good start.

Somebody was referencing here what for me was a very helpful set of recommendations by Robert S. McIntyre, head of the Citizens for Tax Justice, and he said we need to provide stiff fines on entities, including charities, pension plans, and local governments, that cooperate with tax shelter schemes. I would like to just recite these and ask for your comments, please. “We need to fight the lawyers and accountants with monetary penalties for abusive behavior so they stop selling and blessing tax shelter behavior. We need to force tax lawyers to file their often bogus tax-shelter-blessing opinion letters with the IRS so that schemes that rely on non-detection and playing the audit lottery will get scrutinized. We need to fix the loopholes in our anti-tax haven laws and expand the court-made rule that tax deductions must have some real economic substance.”

Do any of those stand out as ones you support or ones that you disagree with?

Mr. EVERSON. Well, you moved through those pretty quickly. Let me speak about the first one.

The use of tax in different entities for tax abusive transactions is a real problem. There are actions that are taking place to curb

that. We have certainly set as one of our four enforcement priorities greater scrutiny of the tax-exempt sector. So that is a real problem. Finance and others are continually looking at that. We need to continue our efforts there.

The second two points you mentioned are about the professions. As I indicated before, we are not going to fix this only through statutory or IRS actions. We have to have a cleaner set of professionals who help people pay no more than what they owe but what they owe.

And the last point, yes, there are always loopholes, but, again, the real answer here, I think, is simplification of the Code, because every time you try to close a loophole, in this complex world you are oftentimes creating an opportunity for something else.

Senator DAYTON. My time has expired. Thank you, Mr. Chairman.

Senator COLEMAN. Thanks, Senator Dayton.

Senator LEVIN, I understand you had one follow-up question.

Senator LEVIN. One more question. Thank you, Mr. Chairman.

Under the PATRIOT Act, the financial institutions are now required to identify the beneficial owners of foreign entities. They are not required at this point to report that, but they are required to identify the owners of foreign entities and keep that information in their records.

Would it be helpful to you if the 1099s that they file were—added to that requirement of 1099s would be the requirement that where a U.S. person is identified by them to be the owner of a foreign entity, that they would notify you with a 1099?

Mr. EVERSON. That sounds like it would be useful on the face of it, sir. I would want to make sure there was not some wrinkle in it. But, generally speaking, more information is of use to us, again, if we have a good infrastructure to process the information and it is actually usable.

Another problem we have not discussed here is with all this complexity and all the transactions, your spaghetti chart, people count on the fact that there will be so much information coming into us that we are not going to be able to decipher it one way or the other. So if we get more information, we need to be able to process it and understand it.

Senator LEVIN. But I am asking you, where the financial institutions identifies an American entity as the beneficial owner.

Mr. EVERSON. On the face of it, that may very well be quite useful. I would want to get back to you after some reflection.

Senator LEVIN. All right. Because they are the ones who have to cut through all the spaghetti and reach their own conclusion. They do it now.

Mr. EVERSON. Yes, I understand.

Senator LEVIN. And if they do it now for their own purposes inside their own file cabinets, why not share that with the IRS?

Mr. EVERSON. Yes, Senator, you have made some very important recommendations in the report. I feel somewhat akin to Senator Lautenberg here. We just got it. They raise a lot of important issues. Before giving any particular reaction, I would like to make sure we had a chance to really look at it.

Senator LEVIN. Let us know for the record.<sup>1</sup>

Mr. EVERSON. Yes, sir, of course.

Senator LEVIN. Thank you. Thank you, Mr. Chairman.

Senator COLEMAN. Thank you, Commissioner. Just two observations. You mentioned that the issues we are dealing with now are not just focused on high-net-worth individuals, that average taxpayers go online and are attempting to make use of some of these same benefits.

I would note that if you Google “offshore asset protection,” you get 479,000 references. So there is quite an industry that is out there.

I also want to note for the record that you are not escaping Senator Lautenberg’s gaze. He has indicated that he will submit questions that he would like responses to, so that will become part of the record. Thank you, Commissioner.

Mr. EVERSON. Thank you.

Senator COLEMAN. I would now like to welcome our second panel: Professor Reuven Avi-Yonah, the Irwin I. Cohn Professor of Law at the University of Michigan School of Law in Ann Arbor, Michigan; and Gary Brown, attorney at Baker, Donelson, Bearman, Caldwell and Berkowitz in Nashville, Tennessee.

I would note that Mr. Brown was formerly special counsel for my colleague, Senator Fred Thompson, and worked on this Subcommittee during its investigation of Enron. I welcome you back to Washington, Mr. Brown.

Professor Avi-Yonah’s and Mr. Brown’s expertise are in the fields of securities and tax law.

Gentlemen, I appreciate your attendance at today’s hearing and look forward to your testimony and perspective on the use of offshore jurisdictions by U.S. individuals to shelter assets from taxation. I am equally concerned about corporate insiders and large shareholders conducting securities transactions offshore, what challenges this presents under our Federal securities laws, and whether we have enough safeguards to protect the investing public. And I look forward to hearing both of your thoughts on these critical issues.

Before we begin, pursuant to Rule VI, all witnesses before this Subcommittee are required to be sworn in. I would ask you to stand, as you have done, and raise your right hand. Do you swear that the testimony you are about to give before this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. AVI-YONAH. I do.

Mr. BROWN. I do.

Senator COLEMAN. As you have observed with the Commissioner, we are using a timing system. Approximately one minute before the red light comes on, you will see an amber light. At that point you can conclude your testimony, give your concluding remarks.

<sup>1</sup>At the conclusion of the hearing, Commissioner Everson responded as follows: “Senator Levin, the Subcommittee has made some very thoughtful recommendations in its report. Because most of these proposals involve significant policy issues, I have shared them with the Treasury Department’s Office of Tax Policy. I am sure that office would be glad to discuss them with you. I would note, however, that we would generally welcome changes that are designed to promote more disclosure and greater transparency. Furthermore, tax law simplification would greatly reduce opportunities for tax avoidance.”



Your written testimony will be printed in the record in its entirety. We do ask that you limit your oral testimony to no more than 5 minutes.

Professor Avi-Yonah, we will have you go first, followed by Mr. Brown. After we have heard your testimony, we will turn to questions. Professor, please proceed.

**TESTIMONY OF REUVEN S. AVI-YONAH,<sup>1</sup> IRWIN I. COHN PROFESSOR OF LAW, UNIVERSITY OF MICHIGAN SCHOOL OF LAW, ANN ARBOR, MICHIGAN**

Mr. AVI-YONAH. Thank you very much, Senator Coleman, Senator Levin. Thank you very much for inviting me, and thank you to the Subcommittee staff for their amazing work. I also only got this last night, so I cannot say I have read every word in the 370 pages, but, nevertheless, I consider this is a very impressive piece of work, and some parts of it I had the opportunity to examine earlier.

What I want to talk about is what I call the international part of the tax gap. As we have heard from Commissioner Everson earlier, the IRS has estimated there is about \$300 billion of taxes that are owed each year and not collected. I have estimated that there is about a \$50 billion part of that that is due to offshore transactions involving tax havens. That is a significant number. It is larger comparatively than some of the other numbers that the IRS has identified and maybe focus more on, like corporate tax shelters or EITC fraud. And it is something that is worth paying attention to.

These transactions make use of offshore entities, trusts, corporations, and the like, that are located in jurisdictions that, as Senator Levin mentioned before, have two characteristics: One is a low or non-existent income tax, and the second one is a legal system that assures bank secrecy and the privacy of corporations so that it is impossible to know who is behind them.

The use of the secrecy is essentially as a shield in order to prevent the IRS and other tax administrations from finding out who is, in fact, the beneficial owner of these transactions.

Now, as Senator Collins mentioned before, we have had hearings like this going all the way back at least to 1937, and we have had a set of rules written in the tax laws that are designed to prevent U.S. citizens, U.S. taxpayers from abusing offshore trusts and offshore entities. So we have, for example, a whole set of rules that require U.S. shareholders in foreign corporations to pay tax currently on certain types of income, investment income that is earned through such entities.

The problem is that, as illustrated by some of these transactions that the Subcommittee has examined, in particular the Wyly transactions, there are loopholes in these rules, and unless these loopholes are closed, I am afraid that the IRS may not be able to enforce them adequately. In particular, as was indicated by some of the questioning before, if you as a U.S. taxpayer set up a trust in, let's say, the Isle of Man, and that trust is nominally independent of you in the sense that it has independent trustees, which can be

<sup>1</sup> The prepared statement of Mr. Avi-Yonah appears in the Appendix on page 111.

a trust management company, and it has independent protectors, which are maybe your friends, maybe your employees, people that will do your bidding but they are not your family and they are not formally related to you so that the law does not consider them to be your related parties or affiliates, then this trust is considered independent and any corporations that it owns in a tax haven will also be considered independent. And the result of that is that if you just follow the form of the tax law, these types of trusts and corporations can then engage in transactions that clearly benefit you, such as the purchase of U.S. real estate, lending money, etc., to the U.S. taxpayer, without subjecting the U.S. taxpayer to current tax.

We do have a set of rules regarding trusts. We have, for example, a provision that says that any foreign trust that has a current U.S. beneficiary will be treated as a grantor trust, and that means that it is treated as owned and controlled by the U.S. taxpayer and the U.S. taxpayer has to pay tax currently on all of the income of that trust. But the problem is that these trusts are not set up with current U.S. beneficiaries. They are set up with current foreign charitable beneficiaries, but the protectors make sure that the trust distributes no income to such charities, and in the future there are contingent U.S. beneficiaries that kick in, let's say, after the settlor's death, and they will be able to recover the income that way. So under current law, that is not caught.

There are provisions in the law also, the other grantor trust provision, that say that if, in fact, a U.S. person, the settlor or grantor, controls the trust in certain ways, such as, for example, directing distributions and/or changing the mix of assets of the trust and so on, or having the right to force a reversion of the assets of the trust back to the United States, then, again, this is treated as a grantor trust.

But the problem is those provisions also are interpreted very technically and narrowly, and the result is that you can avoid them by drafting the trust in the way that I suggested and essentially trusting the protectors to do their job. So, by and large, this is a significant loophole that I think it will be good to close in the ways that the Subcommittee report has suggested.

I would just like to conclude by saying that—echoing some of the statements that were made before. This is a significant problem when rich U.S. individuals are able to avoid paying their U.S. taxes, whether legally or illegally, at a time where regular U.S. taxpayers that just get wage income and get withheld on or just have interest income that is reported to the IRS have to pay their taxes, and this undermines confidence in the system, and I think something should be done about it. Thank you very much.

Senator COLEMAN. Thank you very much, Professor. Mr. Brown.

**TESTIMONY OF GARY M. BROWN,<sup>1</sup> CHAIRMAN, CORPORATE DEPARTMENT, BAKER, DONELSON, BEARMAN, CALDWELL AND BERKOWITZ, NASHVILLE, TENNESSEE**

Mr. BROWN. Thank you, Chairman Coleman, Ranking Member Levin, Senator Collins—good to see you—Members of the Subcommittee. Thank you for the invitation to appear before you and

<sup>1</sup> The prepared statement of Mr. Brown appears in the Appendix on page 120.

share my thoughts on the U.S. Federal securities law implications of certain aspects of your investigation into tax havens and offshore tax shelters. I have prepared detailed written testimony that addresses several of the significant securities law aspects of the transactions that you have under investigation, and I would request that the full text of that be entered into the record.

Senator COLEMAN. It shall, without objection.

Mr. BROWN. The U.S. Federal securities laws are based upon principles of full disclosure. The disclosure that is required by those laws comes in many forms—information that is required when a company is selling securities, information about the persons seeking to acquire ownership of U.S. public companies, and also information about the directors, officers, and significant shareholders of U.S. public companies.

To the extent the information that is required to be disclosed by U.S. securities laws is complete and accurate, the investing public has information with which to make an informed investment decision. From that comes the most important by-product in the U.S. securities marketplaces, and that is trust. Without trust in the underlying information that is disclosed about companies, the markets will simply not function or will do so in a very imperfect manner.

We have all seen what happens when the investing public loses trust and confidence in the financial markets—think Enron, WorldCom, Tyco, etc. One of the purposes of the Sarbanes-Oxley Act of 2002 was to attempt to restore the public trust in the marketplace and to make financial statements of public companies transparent and reliable.

For example, would you or anyone else take your 401(k), take it to Las Vegas, put it in a poker game that you think is rigged for the house? And that is in many respects how some people felt and continue to feel about the U.S. securities markets.

But there is a lot more to transparency than what is required to and should be disclosed by the companies offering securities in the United States. Some of those requirements and their importance are detailed in my written testimony. The concerns that these requirements are meant to address include, in the context of your particular investigation, purported private placements of securities by U.S. companies to “independent” entities that, in fact, are controlled by promoters or affiliates of U.S. companies. Promoters have used these offshore vehicles to trade illegally in their own stocks, to engage in practices known as “painting the tape,” generating fictitious trades to drive up securities prices, and these securities are then resold, sometimes to U.S. investors, without full disclosure—the types of transactions that strike at the very heart of the purpose of the Securities Act of 1933 and sometimes violate the provisions of that Act.

Concentration of share ownership in U.S. public companies by affiliated groups that exceeds reporting thresholds imposed by the Securities Exchange Act of 1934—these prevent the companies in question from determining the identities of large beneficial owners and can give the appearance of greater liquidity in the way of public float for the market for the securities in question.

To the extent that overseas companies are used to shield information that is difficult to discern even in a domestic context, the use of offshore entities in so-called secrecy jurisdictions without question exacerbates the issue of lack of transparency in the U.S. marketplaces, and I have given the example in my written statement here of a situation where a company and several executives were convicted in the late 1990s for engaging in transactions that violated Regulation S.

I venture to say that the principal attraction of doing business in these havens is not the tax benefits. The benefits that are always present are also strict bank and corporate secrecy, lack of transparency in financial dealings, and the lack of any meaningful regulation or supervision in the financial services area. Lack of transparency and strict secrecy is particularly troublesome because it prevents regulators from, among other things, determining true beneficial ownership of offshore entities, particularly when ownership sometimes is evidenced by mere bearer instruments.

Numerous Internet websites, as the Commissioner mentioned a moment ago, allow the opportunity to open offshore accounts, even set up offshore banks. A site that I visited just over the weekend when I was looking up some things said, "Click here for details," and what that does is illustrate the ease with which people can either take advantage of or be taken advantage of by these venues.

The U.S. should continue to explore—and some of those items have been mentioned this morning—effective means to break down the culture of secrecy to obstruction that prevails in many of these jurisdictions. Measures could include legislation and regulations and make doing business in those jurisdictions less attractive. Senator Levin and you, Senator Coleman, have mentioned some of those. Some of the policy considerations are also addressed in my written statement.

But, above all, I have heard several times this morning instances about the professionals in this area. I believe and I can assure you that aggressive enforcement of the securities as well as the tax laws is a sound step in continuing to restore confidence in the fairness of the American securities market. I can tell you in the now 5 years since the collapse of Enron, there is nothing that gets the attention of the business world more than watching investment bankers, lawyers, executives, and others who manipulate the securities system convicted and sent to prison.

So let me finish where I began, and that is with trust. You cannot legislate trust, but you can, however, ensure that the laws and the regulations require complete disclosure, and the penalties for betraying the trust reposed by the investing public are severe and certain.

Thank you again, Mr. Chairman. Your Subcommittee has a great tradition, and I am very honored to appear before you today, and I would be happy to respond to any questions.

Senator COLEMAN. Thank you, Mr. Brown.

It appears to me that there are two issues that we are dealing with here. One is the issue of trust and confidence in the system, and, Mr. Brown, you have talked about that. And, Professor, you have talked about the individuals who are kind of avoiding liability and the burden that really places on the rest of us.

Let me start first with you, Mr. Brown, on this trust and confidence issue and the actions that undermine that. Could you turn to Exhibit 18,<sup>1</sup> the real thick book there?

Mr. BROWN. Yes, sir.

Senator COLEMAN. Exhibit 18 purports to be a document from a trust protector to a particular trustee. And if you look at the next to the last paragraph—and this is one of the Wyly trusts—a purchase is to be limited to approximately 600,000, 700,000 calls in order to stay under 5 percent of outstanding shares and avoid SEC reporting. So, in other words, trustees are being directed to kind of stay below the radar. The SEC would not know the volume of shares that this trust would have. Is that correct?

Mr. BROWN. That is correct, and I would point out, I think I mentioned in my detailed statement that there are specific SEC regulations that provide—when there is the use of a trust or other device specifically to avoid the reporting threshold, then you are deemed the beneficial owner. So this in and of itself violates the spirit of that regulation.

Senator COLEMAN. So, in other words, if you had two or three trusts and the set-up was to split the shares among the trusts to avoid the SEC reporting requirement, that would be problematic from your perspective.

Mr. BROWN. Yes, it would.

Senator COLEMAN. Professor Avi-Yonah, you talk about trusts being nominally independent, and what I am hearing is that an individual could set up a trust, and the trust could have a trust protector, and as you indicated, as long as the protector is not family, then the grantor can add the protector as a kind of a layer of protection. But if in the end that trust were to provide the grantor with jewelry worth tens of thousands of dollars and loans would there be nothing technically illegal about that?

Mr. AVI-YONAH. Well, it depends. I mean, it is just like the Commissioner talked about before. You have to go through two layers. One is kind of the technical transaction. As a technical transaction, I think if you believe that this trust is independent, then independent people can lend you money and can buy you jewelry and can do whatever they want.

I think if the IRS knows about this, they can argue that this is a disguised distribution and that you are really the beneficiary, and then they can catch you.

The problem is this was done in some of these transactions through the Caymans, and the Caymans have a pretty strict secrecy provision. So then how does the IRS know that the money is really coming from a trust that is controlled by the U.S. grantor.

Senator COLEMAN. What you have is a shield by the laws in the Caymans and Nevis and the Isle of Man as to who the real beneficial owner is.

Mr. AVI-YONAH. Right.

Senator COLEMAN. And that goes to Mr. Brown's comments that massive stock transactions that may actually benefit an individual, but nobody knows.

<sup>1</sup> See Exhibit 18 which appears in the Appendix on page 769.

I think you used the words, Professor, the form—with trust protectors, that the form of the tax law is not violated, but there is an issue here between form and substance.

Mr. AVI-YONAH. Right. I think as a substantive matter it is clear in this case that the U.S. taxpayers, in fact, control the trust, and as a result they should be treated as the owners and grantors, and these should be treated as grantor trusts.

Senator COLEMAN. So if you had a situation where there was a repeated pattern of very specific and explicit directions being given by the grantor to the trust protectors and then specific repetitive instructions from the trust protectors to the trustee, who on almost every instance followed the instructions, would that raise a question as to who the beneficial owner is?

Mr. AVI-YONAH. Yes, I think that clearly would indicate that the beneficial owners are really the U.S. settlers.

Senator COLEMAN. And what about loans of trust assets to a U.S. person? Again, when you have a situation where the grantor, the person who set up the trust, gives directions to a trust protector, who then goes to the trust itself, and in almost each and every instance, the trust then provides loans of paintings, jewelry, shouldn't these be treated as taxable distributions?

Mr. AVI-YONAH. They should be.

Senator COLEMAN. But the issue here is that the lawyers can look at this and say from a form perspective there is a question about who the beneficial owner is?

Mr. AVI-YONAH. I frankly find it hard to believe that any lawyer would actually condone these kinds of transactions that include the loans and the flowing of the money back to the United States. The documents that I have seen all had to do with the outflow of money. I mean the transfer of the options in exchange for the annuities and so on, these are blessed with legal opinions. I think it will be hard to find a lawyer who would actually say that there is no problem with all of these essentially distributions of trust assets back to the United States. That I think crosses the line.

Senator COLEMAN. I think it crosses the line, too, and this is not my area of law. This is not my expertise. But common sense would dictate that when you have this repetitive pattern you have got a problem.

Does the trust protector have some responsibility there?

Mr. AVI-YONAH. I think the trust protectors have responsibility, but under current U.S. law—the trust protector is not a common concept in U.S. trust law. It is common in the laws of these other jurisdictions, so we do not really have this concept and, therefore, we do not impose any particular responsibility on the trust protectors as a legal matter.

I mean, I certainly think that this is an area that we should perhaps be looking at.

Senator COLEMAN. Let me, if I can, go to solutions. First of all, I think, Professor, you testified that the Organization of Economic Cooperation and Development could help us address the problem. Commissioner Everson said that he is not sure of that.

Mr. AVI-YONAH. Yes.

Senator COLEMAN. Can you tell us how the Organization of Economic Cooperation and Development could help? And then, Mr.

Brown, if you would respond, what can we do to close these loopholes? What can we do to make sure that we somehow bolster the confidence in a system that right now has loopholes that people are driving big trucks through?

Mr. AVI-YONAH. The OECD, the Organization of Economic Cooperation and Development, has had a project since 1998 to crack down on tax haven abuses, and we have a patchy history of cooperation with that project. That varied, I think. Basically, initially we cooperated very nicely. Then we did not cooperate very much. And after September 11, we realized that there may be terrorist money-laundering types of issues associated, so we started cooperating a little bit more.

One particular example that I think would be helpful is that they have developed, the OECD has developed an exchange of information agreement in the model tax treaty and also model tax exchange of information agreement that is far in advance of anything that we have in our tax treaties today. And I think it would be very helpful if we renegotiate these agreements, for example, that Secretary O'Neill negotiated early on in the Bush Administration with the tax havens along those lines, because it provides for much more extensive, much more elaborate exchange of information than what is available today from any jurisdiction.

Senator COLEMAN. Thank you, Mr. Brown.

Mr. BROWN. Well, since you are focusing on the offshore aspects of this, I think we should look at possibly tightening up the Regulation S requirements, which I have referred to in my statement. Those were tightened up already in 1997 or 1998 in response to some abuses at that point, so some further tightening there. And a couple of people have already mentioned today further focus on the professionals and the companies handling these transactions.

Senator COLEMAN. Thank you, Mr. Brown. Senator Levin.

Senator LEVIN. Professor Avi-Yonah, just to kind of expand on your testimony here, the control—I do not know if you can see this. This is Exhibit 1 in your book,<sup>1</sup> by the way, if it is easier for you. But just looking at that second column from the right, these securities were purchased at the direction of the Wyls, real estate purchased at the direction of the Wyls, business ventures invested in at the direction of the Wyls. This is what all the evidence is through e-mails and others and another witness, who was one of the protectors, will subsequently tell us about. Art and jewelry used by the Wyls families, paintings of the Wyls.

What that shows, according to your testimony, is basically the beneficial—as you put it, that these should be treated, put it this way, as taxable transactions, basically. Is that correct?

Mr. AVI-YONAH. I think what this would make is to render all of these trusts that are in your first column in the left into grantor trusts, which means that the assets are treated as assets of the Wyls and they get taxed on all of their income, not just the income that flows back into the United States, but the entire—

Senator LEVIN. All the income of the trust?

Mr. AVI-YONAH. Yes.

Senator LEVIN. Not just the second from the right column.

<sup>1</sup> See Exhibit 1 which appears in the Appendix on page 622.

Mr. AVI-YONAH. Correct.

Senator LEVIN. Very specifically, in both areas, Professor, first you said that you have taken a look at some of the recommendations that we make in our report to try to pierce this veil of secrecy and to try to look at the substance rather than at the form and to try to make our laws much stronger, tougher, get rid of loopholes which focus on form rather than substance, which allow these kind of charades to occur.

Specifically, what would be the one or two most important things that you think we could do in that regard?

Mr. AVI-YONAH. Well, I think the main focus should be on this question of who controls various foreign entities, and I think it is a very good idea, what you recommended, that there will be a presumption that if a U.S. person sets up an entity in a tax haven jurisdiction, then there will be a rebuttable presumption that he or she controls that entity, which they can rebut. But currently, as you pointed out, the IRS bears the burden of proving it.

The other aspect of this, I think, that needs to be addressed is the secrecy issue, that is, how will the IRS know that these entities in tax havens exist. And I think about that I would encourage giving the IRS more resources to focus on this area. I would encourage renegotiating, as I mentioned before, the exchange of information agreements to make them broader and more automatic and the like.

Senator LEVIN. Thank you.

Now, Mr. Brown, if someone directs the investment activities of offshore entities, should they include those stockholdings, basically, of those entities in their own SEC filings?

Mr. BROWN. In my opinion, yes. Even unexercised control is control.

Senator LEVIN. And where it is exercised, it is really control.

Mr. BROWN. It is really control.

Senator LEVIN. Thank you.

Mr. Chairman, thank you, and I want to thank this panel, not just for their presentation here today, but they have also been very helpful to us in preparing for today, answering technical questions, and we are very grateful.

Senator COLEMAN. Thank you, Senator Levin. Senator Lautenberg.

Senator LAUTENBERG. Mr. Chairman, unfortunately I was not able to hear the testimony nor the questions that were previously asked, and I do not want to take up a lot of time, and I will reserve the opportunity to send questions in writing and look for a response. But I would just ask this, if it is not redundant, and I would appreciate your response:

Have IRS resources kept up with the burgeoning tax shelter growth that we have seen over the past 10 years?

Mr. AVI-YONAH. I think the answer is clearly no. The previous Commissioner, Commissioner Rossotti, testified in 2004 that there was a loss of about 20,000 full-time positions between the early 1990s and 2004. This has to some extent been made up since then, but not fully, and you have to remember that in the meantime the complexity of the tax law is increasing all the time, and the com-



plexity of the economy is increasing all the time. So I think the answer is no, that they don't have enough resources.

Senator LAUTENBERG. Mr. Brown, do you have a view on that?

Mr. BROWN. I really do not have a view as to the IRS. You might ask a similar question as to the other regulatory agencies, like the SEC, for example. They have had substantial increases in staff and funding, but you might ask whether that is appropriate levels for these areas.

Senator LAUTENBERG. In short form, what is the SEC's role? What would the SEC's role be here?

Mr. BROWN. In policing the securities aspects of these international transaction that violate Regulation S, the 1933 Act and violate the reporting provisions of Section 130 of the 1934 Act.

Senator LAUTENBERG. But doesn't that fall, Mr. Brown, to the IRS to ferret out these abuses and enforce the rules as they exist? One thing is obvious, and that is that the rules are inadequate in managing what should be routine reporting.

So I think it is fair to say that—and I understand that Mr. Everson had some things to say after I left about the resources that the Administration was going to supply to IRS was adequate and that we should support it. But the fact is that the numbers are easy to deal with, and that is, there is a significant cut coming in terms of the number of people that—there are going to have to be reductions in force. So that there is a design, as far as I am concerned—and I stand on this. There is a design to not make it too tough on people who are so fortunate as to have amassed fortunes beyond the belief of most people in the country. And they are still not content with those, and we have—I recognize we are not writing laws on morality here, but that is too bad. But the fact is that where things are inadequate to the mission and when we see the revenues lost, when the deficit continues to burgeon, and we go happily along our path of making sure that taxes for the wealthy and the super-wealthy are diminished.

I did not do badly in business, but I am not in that league, and I would not do it in the first place.

Thanks, Mr. Chairman.

Senator COLEMAN. Thank you, Senator Lautenberg. Senator Dayton.

Senator DAYTON. All I can say to my colleague Senator Lautenberg is if this were a tome on morality, it would be extremely short, because there is not any morality here. These ventures are amoral at best, and immoral, as you said very eloquently in your opening statement, at worse.

I do not have any specific questions of this panel, Mr. Chairman. Thank you.

Senator COLEMAN. Thanks, Senator Dayton.

I just want to, if I can, ask one follow-up question of the professor. These offshore jurisdictions, the Caymans, Isle of Man, Trinidad, Tobago, Jersey, and Guernsey, they depend on these offshore transactions. They are a big part of their economy. So do we have any leverage? Is there a carrot and a stick approach that we can use to, in effect, force them to work with us, to cut through the shroud of secrecy? Do we have the ability to get them to step up to the plate, to work with us to make sure that we can pierce the

veil where, in fact, transactions are being conducted to perpetuate a fraud?

Mr. AVI-YONAH. Yes, I think we certainly do. As far as the carrot is concerned, I think it would be a good idea to consider some form of aid to wean them off the offshore sector. A lot of the benefits of the offshore sector go to professionals that reside in the United States or in other rich jurisdictions. These fees and the transactions were not paid to people in the Caymans or in the Isle of Man. Those people do—I mean, these are shell corporations. They do ministerial things. They do not earn a lot of money. But, of course, for those jurisdictions this is a significant amount. For peanuts, we could really enable them to restore all of that income, and it is a very small percentage compared to the trillions of dollars that they handle.

As far as the stick is concerned, I think fundamentally the reality is that nobody, except for maybe drug launderers, leaves their money in any of these jurisdictions. They have to go back into the United States or into other rich countries because that is where the investment opportunities are. So we can, I think, close up the tax havens overnight if we said something like if you don't cooperate with the exchange of information, the payments to you will not be deductible, or they will not qualify for the interest exemption which would mean no withholding tax.

If we did that, and we can do that in cooperation with the Europeans, who are very interested, and with the Japanese, we can shut them off within a week completely.

Senator COLEMAN. Mr. Brown.

Mr. BROWN. Two things along those lines, and, Senator Levin, the presumption of control that is much less problematic in the securities aspect than I think it would be in the tax aspect. The other is in the Regulation S offering, following up on what the professor was saying, that if you identify certain of these jurisdictions, the issue in some of the securities transactions is what I will call flowback into the United States, that is, the security leaves the United States and you do not want it coming back to the United States unless the protections are set. So require a longer holding period, for example, for securities that go into some of the jurisdictions that you have identified as abusive jurisdictions.

Senator COLEMAN. Thank you, Mr. Brown. Thank you, Professor. The panel is excused.

I would now like to call our third panel of witnesses: Haim Saban, Robert Wood Johnson IV, and Michael C. French.

Mr. Saban and Mr. Johnson are two individuals who were advised to execute the POINT tax strategy to defer and eliminate capital gains from taxation. I am appreciative that they can testify before us today and look forward to understanding what their various advisors told them they could do, what they understood the POINT transaction could accomplish, as well as their understanding as to the validity of the transaction.

Mr. Saban, I want to thank you on behalf of my children, who grew up watching the Mighty Morphin Power Rangers. You brought years of entertainment to my family.

Mr. Johnson, I grew up in Brooklyn, New York, went to school at Hofstra, which is the training grounds for the New York Jets, and I wish you luck in the upcoming season.

And I want to mention on the record that the Subcommittee invited Sam and Charles Wyly to testify before us today. I have been advised that the Wyls, along with Sharyl Robertson, who was involved in the operation of the Wyly offshore trusts as a trust protector, have all declined to testify, citing their Fifth Amendment privileges. It is unfortunate that the Wyls and Ms. Robertson are not before us today, but I respect their constitutional rights and privileges. However, I am looking forward to hearing from Michael French who was involved with the Wyls offshore network as a trust protector and will shed some light and details on the Wyly offshore trusts.

To all witnesses, I appreciate your attendance at today's hearing and look forward to your testimony. As you will note, before we begin, pursuant to Rule VI, all witnesses before this Subcommittee are required to be sworn. I would ask you to please stand and raise your right hand. Do you swear that the testimony you are about to give before this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. SABAN. I do.

Mr. FRENCH. I do.

Mr. JOHNSON. I do.

Senator COLEMAN. Again, we will be using a timing system. At approximately one minute before the red light comes on, which means you should conclude your testimony, the light will go from green to yellow and will give you the clue to conclude your testimony. Your written testimony will be presented in the record in its entirety. We ask that you limit your oral testimony to no more than 5 minutes.

Mr. Saban, we will have you go first, followed by Mr. Johnson. We will finish up with Mr. French. After we have heard your testimony, we will turn to questions. Mr. Saban, you may proceed.

**TESTIMONY OF HAIM SABAN,<sup>1</sup> SABAN CAPITAL GROUP, INC,  
LOS ANGELES, CALIFORNIA**

Mr. SABAN. Thank you. Good morning, Mr. Chairman, Senator Levin, and Members of the Subcommittee. I understand that the Subcommittee's focus this morning is on the role of professional firms and advisors with regard to certain tax-related transactions. Thank you for the invitation to testify regarding my own experience with the promoters of a 2001 transaction that you have referred to as "the POINT transaction."

To the extent that my testimony can in some way assist you in strengthening and improving public policy in this area, I am pleased to be able to do so.

You asked that I be prepared to address a number of specific questions regarding the POINT transaction. If you would allow me, I would like to first give you some background on how I became involved with this transaction, and then I will be happy to answer specific questions that you may have.

<sup>1</sup> The prepared statement of Mr. Saban appears in the Appendix on page 139.

Since my arrival in this country in 1983 and my subsequent naturalization as an American citizen, I have been fortunate in countless ways, both in my personal life and in business. I have had the benefit of some very successful investment opportunities. In 2001, I found myself in a situation where it seemed likely that I would be receiving a significant amount of income from the anticipated sale of Fox Family Worldwide. I consulted my trusted tax and legal advisor, whose advice I have followed for 15 years, and asked that he explore tax planning possibilities regarding the expected income.

After several months, my advisor, accompanied by an individual from Quellos, came to me with what appeared to be a very complicated proposal for tax deferral. It involved numerous steps and entities. I did not understand the structure of the transaction, but I did have two concerns that I raised with my advisor: That the transaction be legal, and that a reputable law firm would say so.

My advisor assured me that this was the case. I am neither a lawyer nor an accountant. In fact, my formal education ended when I finished high school. As a result, I relied on those assurances and left the structures and details of the transaction to others.

Long after the transaction was concluded, I learned that I had been poorly advised in 2001 and that there were problems with the assurances that I received at the time. I was quite upset, to say the least. I am now in the process of arranging with the IRS and State authorities to pay the taxes, interest, and substantial penalties.

Again, I appreciate the opportunity to share my experience with you, and I would be happy to answer your questions.

Senator COLEMAN. Thank you, Mr. Saban. Mr. Johnson.

#### **TESTIMONY OF ROBERT WOOD JOHNSON IV, NEW YORK, NEW YORK**

Mr. JOHNSON. My name is Woody Johnson, and I am here in response to the Subcommittee's request to discuss a transaction that occurred more than 6 years ago.

I have been in business for 30 years, and over that time I have entered into many transactions. In each transaction, I have always relied on advisors and counsel. In 2000, I entered into a financial transaction with complex tax implications. Before entering into this transaction, I was advised by my long-standing accountant, Larry Sheinfeld, an investment advisor at Quellos, and Cravath, Swaine and Moore, one of the most prestigious and well-established law firms in the country, that their analysis of the tax implications was consistent with the Tax Code. In short, I was assured by my advisors that this transaction was legal. I would never have entered this transaction had I believed otherwise. I even asked for and received a formal legal opinion from Cravath approving the transaction.

I want to emphasize for the Subcommittee that I did not and do not have any personal knowledge about the particular steps or details of the transaction. As I do for all of my business dealings, even substantial ones, I relied on my staff and on our attorneys, accountants, and investment advisor to handle those details. And, therefore, I have previously told the Subcommittee I cannot answer necessarily specific questions about the details of the transaction.

In 2002, again relying on the advice of my attorneys and accountants, I voluntarily came forward and fully disclosed this transaction to the IRS. In subsequent years, the IRS audited the transaction and challenged the claimed tax treatment. I then settled with the IRS and agreed to pay 100 percent of the tax owed, plus all interest.

Also, I would be willing to answer questions that I am capable of answering.

Senator COLEMAN. Mr. French.

**TESTIMONY OF MICHAEL C. FRENCH,<sup>1</sup> FORMER WYLY TRUST PROTECTOR, DALLAS, TEXAS**

Mr. FRENCH. Thank you, Mr. Chairman. Mr. Chairman, Senator Levin, and Members of the Subcommittee, I would like to begin by thanking the Subcommittee staff, in particular Robert Roach and Mark Nelson, for their courtesy and professionalism with respect to this matter.

My name is Michael C. French. I reside in Dallas, Texas. I am the retired chairman of the board of Scottish Re Group Limited, a life reinsurance company that I founded and took public in 1998 and listed on the New York Stock Exchange. It has become one of the largest life reinsurance companies in North America.

I practiced law in Dallas from 1970 to 1992 with the firm of Jackson and Walker, focused primarily on corporate transactions. Some of my largest clients in the law practice were companies in which the Wyly family in Dallas had interests.

At the end of 1992, I left the active practice of law and formed a relationship with the Wyly family, joining several of their companies as a director and consultant. And I was also very active in the establishment, in 1993, of Maverick Capital, an investment management business that was sponsored by the family, and I remained active in that business until 2000, by which time Maverick had grown to have over \$7 billion under management.

I severed my relationship with the Wyly family and sold my interest in Maverick in the year 2000.

It is important to note that in testifying today I am constrained by several factors. First, I have been instructed by the Wyly's counsel that they consider me to have been providing legal services to them during the period from 1993 to 2000, and further instructing me not to disclose any privileged attorney-client communications or attorney work product.

I am also limited in that I severed my ties with the Wyly family and their companies over 6 years ago and have very little knowledge of their activities since that time. And for that matter, a substantial portion of my time for up to 3 years before I severed my relationship with them was spent much more in building and operation Scottish Re on a full-time basis and not on Wyly family matters.

In addition, my separation from the Wyly family was not entirely cordial and under the terms of a settlement agreement, I was required to return to them or destroy any documents I had relating to their affairs.

<sup>1</sup> The prepared statement of Mr. French appears in the Appendix on page 140.

And last, I am not an expert on tax issues relating to foreign trusts and have never practiced law in that area, although I was exposed over the years to the advice of a number of attorneys who did.

In addition to my other activities, I served as a protector of various Wyly family trusts in the Isle of Man from 1992 until late 2000. Both the Wyly family and I received advice from various lawyers and law firms regarding the establishment, structure, and operation of those trusts. To the extent that advice related to me individually, as opposed to me as a representative of the Wyly family, I am able to discuss it and I am not constrained by their attorneys' instructions regarding their attorney-client privileges.

In that regard, I was a beneficiary of an Isle of Man trust similar to some of the Wyly trusts and while I believed, based on the legal advice that was given to me, that the trust was a legally effective mechanism, I became concerned that it was too aggressive in light of the newer IRS pronouncements that started coming out around 2000. Therefore, I unwound the deferral mechanism in February 2001 and had the trust domesticated to the United States at the end of 2002.

And with that, I will be pleased to try and answer any of your questions.

Senator COLEMAN. Thank you very much, Mr. French. We appreciate your candor. We understand there are some limitations on your testimony

Just first, Mr. Saban and Mr. Johnson, each of you were involved in transactions where you were going to realize a significant amount of gain, capital gain. And I presume it is not unusual in those circumstances to go to your lawyers and say hey, we would like to minimize our tax liability within the bounds of the law. I presume that is not an unusual thing to do?

Mr. JOHNSON. That is right, it is not unusual.

Senator COLEMAN. Mr. Saban.

Mr. SABAN. I concur.

Senator COLEMAN. Mr. Saban, you then went to Bryan Cave, a very prominent law firm in St. Louis. And Mr. Johnson, you went to Cravath, Swaine, which is a very prominent law firm in New York. Is that correct?

Mr. JOHNSON. Correct.

Senator COLEMAN. Mr. Saban.

Mr. SABAN. I did not go to Bryan Cave.

Senator COLEMAN. Let me back up. You requested that one, the POINT deal be kosher; and two, that prominent law would provide an opinion letter indicating that it was kosher. Is that correct?

Mr. SABAN. This is accurate.

Senator COLEMAN. And so, in the end, you got an opinion from a very prominent firm essentially saying this was a kosher deal?

Mr. SABAN. Correct.

Senator COLEMAN. If I can use Senator Levin's chart on the POINT strategy,<sup>1</sup> I have a couple more questions.

<sup>1</sup> See Exhibit 6 which appears in the Appendix on page 722.

Mr. Johnson, did anyone ever talk to you about the entities known as Jackstones or Barnville that were set up in the Isle of Man?

Mr. JOHNSON. I testified before your Subcommittee and I did not recall that.

Senator COLEMAN. Mr. Saban, did anyone talk to you about setting up entities in the Isle of Man named Barnville and Jackstones? Do you recall that?

Mr. SABAN. When this chart was presented to me by my advisor I said to him, I am sorry, I cannot even begin to get my arms around this.

Senator COLEMAN. Even if you had a college degree, Mr. Saban, it would be difficult getting your arms around this.

Mr. SABAN. If I was a professor, I do not think I could get my arms around this. I just said answer those two questions. Is it kosher? And can we get a reputable firm to say so?

Senator COLEMAN. One of the things involved in these transactions to support the tax benefits was an investment piece. Did anybody talk to you about the investment piece and why an investment piece was necessary for you to cover some tax losses, either Mr. Saban or Mr. Johnson?

Mr. JOHNSON. I do not recall being told what the implication of the investment piece was, no.

Senator COLEMAN. Mr. Saban.

Mr. SABAN. It was mentioned to me that there were two components, the tax deferral component as well as the investment piece.

Senator COLEMAN. Did Quellos indicate to you which was the main part of this deal, what this was all about?

Mr. SABAN. It was very clear to me that the main part of the deal was tax deferral.

Senator COLEMAN. This is a pretty significant way to write off a lot of gain. Did that raise any questions in your mind about the amount of gain that could be written off by this kind of complex transaction? Mr. Johnson.

Mr. JOHNSON. I thought it was a deferral mechanism, rather than an ability not to ever pay those taxes. But it was one that I think we paid a fairly large fee, so I assumed that it had been carefully researched.

Senator COLEMAN. Do you recall what your fee was?

Mr. JOHNSON. I think it was over \$5 million.

Senator COLEMAN. Mr. Saban, do you recall what your fee was?

Mr. SABAN. Close to \$50 million.

Senator COLEMAN. Mr. French, can you explain to the Subcommittee what a trust protector does, from your perspective?

Mr. FRENCH. In the context that I was involved—

Senator COLEMAN. Specifically, from 1992 to 2000, regarding the offshore trusts of Sam and Charles Wyly, can you tell me what you saw your responsibilities to be?

Mr. FRENCH. First, the—probably pretty much the only power that a protector had under those trust documents was to remove the trustee. In connection—and that essentially was it. There may have been a few other collateral powers, but not many.

But in connection with my being appointed as a protector in those trusts in 1992, I personally asked for advice from the attor-

neys who were setting all of that up about what exactly is the role of a protector. And was told by them that one of the functions would be to serve as a communication trail between the beneficiaries and the trustees, that recommendations with respect to transactions could be made.

And so that was what I understood to be part of the role and part of the role that was blessed by the attorneys who set up the entire structure.

Senator COLEMAN. So, as trust protector, you would get recommendations from the grantor and the beneficiaries, and give them to the trustees themselves, who would then have the option of executing the recommendations; is that correct?

Mr. FRENCH. That is correct.

Senator COLEMAN. How many recommendations do you think you were involved in making?

Mr. FRENCH. I really do not recall anymore, Senator.

Senator COLEMAN. Can you give me a ballpark figure?

Mr. FRENCH. It was a long time ago. No, I really do not because I phased out of that somewhere after the mid-1990s and I really do not recall. I saw a number of documents in the document list when I was testifying before the staff, but I never counted them, so really cannot.

Senator COLEMAN. Do you recall a recommendation ever being rejected by the trustees?

Mr. FRENCH. Not rejected. I do recall a few situations where the trustees had some concerns about some specific investments. Frankly, I do not recall making recommendations with respect to those investments. But they expressed a concern to me later about some investments they had.

Senator COLEMAN. But not rejecting a recommendation?

Mr. FRENCH. No.

Senator COLEMAN. If I can ask you to look at Exhibit 10,<sup>1</sup> it is a letter in the exhibit book over there. If you would just open that up and turn to Exhibit 10, the big thick book there.

Mr. FRENCH. OK, I have Exhibit—a letter dated April 20?

Senator COLEMAN. This purports to be a letter—I think this is from you, is it not? Your signature is on this, yours and Sharyl Robertson's. This is to Lorne House Trust, whom I presume to be the trustee.

And the letter is very detailed. "Pursuant to Section 8 of the Pitkin Non-Grantor Trustee Agreement," etc. "To exercise 100,000 Michaels Stores options held in Roaring Creek, Limited, which is owned by the Pitkin Non-Grantor Trust using a cashless exercise through First Boston Corporation and Lou Schaufele being the broker." "The committee recommends selling all the stock at a price to exceed at least \$20 per share." "The exercise price is \$3.00 a share, requiring \$300,000 to exercise the stock with Michaels Stores." "Cash in excess of"—and so on.

This is a very detailed letter that you sent. Where did this information come from?

Mr. FRENCH. The information?

<sup>1</sup> See Exhibit 10 which appears in the Appendix on page 732.



Senator COLEMAN. Excuse me, where did the recommendation come from?

Mr. FRENCH. The recommendation came from the Wylys.

Senator COLEMAN. And that recommendation was then given to the trustee, who then executed this transaction?

Mr. FRENCH. That is correct. I should note—

Senator COLEMAN. This transaction.

Mr. FRENCH. Yes. I should note that the attorneys, again, that were involved in setting up these trusts were aware of this and had advised me that this was OK.

Senator COLEMAN. Again, if you can turn to Exhibit 18 in the book.<sup>1</sup>

Mr. FRENCH. Yes.

Senator COLEMAN. This is a fax transmittal from you to Ronald Buchanan. Was Mr. Buchanan a trustee at Lorne House Trust?

Mr. FRENCH. Yes, he managed Lorne House Trust.

Senator COLEMAN. Exhibit 18 starts off with “Please dispose of this fax after reading, as there will be ample documentation as needed.”

And then it says “It is expected that a recommendation will be made to Wychwood that the Plaquemines Trust, and another trust settled with Wychwood by Pitkin, should contact Lehman regarding acquiring call options on SSW, probably for about 2 years in the market. Wychwood would finance the transactions through loans from Lorne House entities. It is likely that a portion of the price could be financed through Lehman.”

Again, this direction came from where?

Mr. FRENCH. This direction came from the Wylys.

Senator COLEMAN. And by the way, this fax says “Wychwood would, in either case, be limited to approximately 600,000 to 700,000 calls, in order to stay under 5 percent of outstanding shares and avoid SEC reporting.” Is that correct?

Mr. FRENCH. That is what it says, yes.

Senator COLEMAN. Did that ever raise any concerns to you, as a protector, that directions were being given here to avoid SEC reporting?

Mr. FRENCH. The SEC—the 13(d) rules is what I think you have made reference to, and they were a little bit legalistic in the way they—and I think they still are, as a matter of fact. They literally look to who has the legal power to vote the shares, who has the legal power to sell the shares. And then there are other provisions in there.

But I think—no, I did not—at the time, I thought this was OK.

Senator COLEMAN. My time is up. I will turn to Senator Levin. I will come back to the witness.

Senator LEVIN. First, let me thank all of our witnesses for coming here today. I know that, Mr. Saban, you had to travel a long way to get here and you are returning that distance. I do not know how far the other two came, but we appreciate your being here and just frankly, wish the Wylys were also here to give us their position. But they had a right to assert those constitutional rights. They did so. But it does mean that you should all be aware of the

<sup>1</sup> See Exhibit 18 which appears in the Appendix on page 769.

fact that your presence here is very much appreciated by this Sybcommittee.

Mr. Saban, you made reference to the fact that at some point in the presentation of this tax structure to you of this tax shelter, that you were told that there needed to be an investment piece added to it; is that correct?

Mr. SABAN. Correct.

Senator LEVIN. And that you were told, as I understand, that the investment piece was needed so that the tax deferral piece would "hold water?"

Mr. SABAN. Correct.

Senator LEVIN. And that the tax deferral was "ad infinitum."

Mr. SABAN. Correct.

Senator LEVIN. Mr. Johnson, were you also told, when you were told that this was just a tax deferral and not tax avoidance that this was an ad infinitum tax deferral?

Mr. JOHNSON. No, I do not recall that, no.

Senator LEVIN. Did they tell you how long it would be deferred?

Mr. JOHNSON. No.

Senator LEVIN. Did you ask them how long it would be deferred?

Mr. JOHNSON. I do not think—I do not remember doing that, no.

Senator LEVIN. So that, in terms of what this bought you, in terms of what you thought it bought you—put it that way—which would be a tax loss to offset a tax gain, in your case, Mr. Saban, as I understood it, you had a taxable capital gain of about \$1.5 billion; is that correct?

Mr. SABAN. Correct.

Senator LEVIN. And the cost to you, including that so-called investment piece, was \$50 million?

Mr. SABAN. I think it is a little more than \$50 million, including various fees but it is the ballpark.

Senator LEVIN. So in the ballpark of \$50 million. You were informed by your lawyer and adviser that you could obtain a capital loss to offset your capital gain of \$1.5 billion.

Now you are a businessman. Did that not raise alarm bells in your head? I know \$50 million is a lot of money. It is about \$49-plus million more than I will ever have, and \$49.9 million than most Americans will ever have. So I am not talking in terms of that not being a lot of money. I am talking about relative to what you were buying, a tax loss of \$1.5 billion. That is about a 2,500 percent return on that investment.

Did that not ring off some alarm bells in your head?

Mr. SABAN. It did, which is why I asked my advisor, who has been by my side for 15 years, is this completely kosher; i.e. legal? And would a reputable law firm say so? And the man who was with me for 15 years assured me that this is the case.

Senator LEVIN. Have things really gotten so bad in this country that avoiding taxes to the extent that you thought you were doing—of not paying capital gains on a \$1.5 billion—could be purchased with such a relatively small cost?

It seems to me that is the fundamental question that you both face as legitimate business people. Have we really gotten to that point where you do not say something is wrong here? Something smells here. Something is rotten here?

Mr. Johnson, did you have alarm bells go off in your head when you, for a few million dollars as I remember, were purchasing a tax loss of about—what was that, \$145 million?

Mr. JOHNSON. I think it is safe to say that—yes. And that is why I relied on my advisors, both legal advisers and investment advisers, and we got that opinion from Cravath because we wanted to make sure that this deferral strategy was correct and legal and copacetic with the IRS code.

Senator LEVIN. It turns out it was not copacetic with the IRS, to put it mildly. And it is not copacetic or acceptable to, I think, any kind of average person who says what is going on here that professionals are giving advice to people who have huge capital gains that they can shed those capital gains, just shed them like a piece of clothing for a relatively tiny cost?

We are going to press these professionals who come before us later. But I have to tell you I believe that there is some responsibility in you to just say to these people, something has got to be wrong here, have you folks checked out the transactions that underlie this creation?

I will leave it at that for you.

Mr. French, it appears that the Wyly protectors, and you being one of them, the trust protectors, made recommendations to the trustees. You have already testified to the Chairman's question that these recommendations to the trustees were invariably carried out. There may have been an exception, but basically how many recommendations would have been made to the trustees? Would it be in the hundreds?

Mr. FRENCH. I do not think I participated in that many recommendations but I do not have—

Senator LEVIN. Would it be a lot over the years? Would there be a significant number of what you call recommendations that were made?

I am going to put in front of you Exhibit 4.<sup>1</sup> These are recommendation after recommendation after recommendation. We have identified about 100 of them. Let me just give you some of the recommendations that were made to you—made to the protectors, first of all.

In Exhibit 4, there is a letter from Shari Robertson. "Mike French and I would like to recommend to the trustee to purchase the following security from Sam Wyly . . . in one of the foreign corporations owned by Bulldog Trust."

Another one, "the protectors are prepared to recommend . . . to move a stock a block out at \$15 a share."

Another e-mail, "Here's a brief outline of the usual process . . . for acquisitions [of art]." Acquisitions of art. "I usually get the invoice and forward it to the Isle of Man . . . indicating that 'the protectors recommend payment.'"

Next, "The protectorate committee recommended that you consider that the Tyler Trust consider the purchase of collectibles and art work. I am attaching following invoices totaling \$450,000."

<sup>1</sup> See Exhibit 4 which appears in the Appendix on page 629.

Next, "Shari Robertson and I, as protectors, recommend that the trustee consider contributing \$10,000 to the lobbying effort"—this is a fax from you.

And so forth, page after page of recommendations, so-called, to the nominal trustees here.

Do you remember making these kinds of recommendations?

Mr. FRENCH. Yes, to the extent that these reflect that they came from me, although some of the dates do not look right because the first one says 2002. I was long gone from the Wyly organization long before that.

Senator LEVIN. But you remember these kind of recommendations being made?

Mr. FRENCH. Not so much with respect to some of the artwork. There were a few that I recall about art, but not all of these, I do not believe. French Empire chandeliers and things like that.

I believe when I went over this with the staff they had some—these were faxes, not e-mails, and a lot of them may have had my name on it but no signature. And some others did not have my name on it, at all.

Senator LEVIN. It says here, talking about chandeliers, "The protectors," that is you, "recommend the purchase of French Empire chandelier for \$24,421." That was from Shari Robertson and you. Do you remember that?

Mr. FRENCH. I believe if you go back and find that document, it has my name on it but I did not sign that document.

Senator LEVIN. Were you aware of that kind of—

Mr. FRENCH. Actually no, not really. These in the later years, a lot of recommendations appeared to have been made that I was not aware of, particularly with respect to personal matters.

Senator LEVIN. How about things like real estate investments and recommendations?

Mr. FRENCH. I do not recall ever making a recommendation with respect to a real estate transaction.

Senator LEVIN. What kind of recommendations did you make, that you recall?

Mr. FRENCH. They were earlier on and they related to dealing with investments that were held by the trust, either investments in some of the companies, Sterling Software, Michaels Stores, etc., or Maverick Fund, things like that.

Senator LEVIN. Where were those requests to you from?

Mr. FRENCH. The request that you make the recommendation?

Senator LEVIN. Yes.

Mr. FRENCH. Those directions or instructions or requests, whatever, generally were communicated to me from the Wylys, usually via Shari Robertson.

Senator LEVIN. My time is up. I hope there will be another round, though.

Senator COLEMAN. We will have another round, Senator Levin.

Senator LEVIN. Thank you.

Senator COLEMAN. Senator Lautenberg.

Senator LAUTENBERG. Thanks, Mr. Chairman.

I want to thank our people at the witness table, Mr. Saban, Mr. Johnson, and Mr. French. I want to say this: I know both of you, not directly but through content, and have respect for you and your

business accomplishments. Mr. Johnson, I know more about you because we come from the same State and respect what you have done.

One of you shows that in America you can succeed as no other place. The other of you has taken family wealth acquired over a lot of years and used it for many good purposes, charitable in each case.

But I am disturbed and the advantage that Senator Levin, he had the opportunity to ask my questions first. And that is—and by the way, Mr. Chairman, do any of these signs say disregard Lautenberg?

Senator LEVIN. Exhibit 4.<sup>1</sup>

Senator LAUTENBERG. Exhibit 4 for the witnesses to see.

Whether we use the words kosher or copacetic, I think I sense an area of discomfort in the use of the words, because there has to be an awareness of some sort that you are paying less tax. You both each said yes, deferred taxes.

But why were taxes being deferred? Is that not, in your view, an obligation of citizenship? Either Mr. Saban or you, Mr. Johnson.

Mr. JOHNSON. I agree 100 percent, it is an obligation.

Mr. SABAN. I concur.

Senator LAUTENBERG. So then why not? I almost feel on the other side of the table, and I started a company with a couple of other poor boys and we succeeded beyond our wildest expectation.

But I feel that just being in this country, when my grandparents came they brought my parents as very small children, is such a distinct honor, such a distinct miracle.

And believe me, I am not happy when my taxes or my estimates have to be paid and so forth. There is always some concern about what am I doing.

And then when I think about the fact that we are spending money on research against cancer and diabetes and things of that nature, I say what a treat, that we are spending money on educating people. Not enough. But I think wow, what a wonderful opportunity this is.

So forgive me each of you, we are just on a different telescope, I guess.

Because some alarm had to be raised or some concern had to be raised with the fact that you were actually laying out very little cash, on a relative basis. We heard your discussion, Mr. Saban, with Senator Levin as he compared the down payment to the ultimate savings.

I do not want to continue to ask the obvious but you sought the shelters, you got the shelters. And now, when they are out here in the public light, they do not look nice for either one of you for the kind of people that you are and the kind of people that you represent, in many cases so well.

Mr. Chairman, I am going to conclude my comments with one thing I wanted to ask Mr. French, one thing could be two or three but in keeping within the time constraint as you have laid out.

Mr. French, what was the value of Maverick when you joined them in 1993?

<sup>1</sup> See Exhibit 4 which appears in the Appendix on page 629.

Mr. FRENCH. Maverick Capital was a startup enterprise that was going in the investment management business. It is a hedge fund manager. In the summer of 1993 we brought in an investment manager named Lee Ainsley from Tiger Management in New York and started looking for outside investors.

Senator LAUTENBERG. Do you remember what the capital was?

Mr. FRENCH. The capital of?

Senator LAUTENBERG. That was put in initially by the Wylys.

Mr. FRENCH. Some of the Wyly Trust were investors in the original fund. I do not recall how much that was. I think it was about \$40 million.

I do not know what the investment in Maverick Capital, the management company itself, was.

Senator LAUTENBERG. Because it grew to \$7 billion by 2000—

Mr. FRENCH. Yes. The assets under management grew to at least \$7 billion at the end of 2000.

Senator LAUTENBERG. And your being an educated man in the law and so forth, I hear from your comments some discomfort with the reach for these shelters that were overseas; am I correct?

Mr. FRENCH. I think that might be getting into legal advice or something like that, Senator.

Senator LAUTENBERG. I do not want you to overstep a bound, but can I ask your opinion? If the Wylys were at the table with you, do you think that they could say they were not aware of the value of these shelters?

Mr. FRENCH. Unfortunately, Senator, I cannot speak for them. I do not know what they would say.

Senator LAUTENBERG. Yes, well, you know them well enough to have an opinion about them.

Mr. FRENCH. No. I really do not have that opinion.

Senator LAUTENBERG. Thank you, Mr. Chairman.

Senator COLEMAN. Thank you, Senator Lautenberg.

I would know and I would associate myself with the concerns raised by Senator Lautenberg. But I would say to my friend from New Jersey that not every American is as thrilled and as exhilarated by paying taxes, and the arrival of April 15 is not a day of celebration for many Americans. I just wanted to reflect on that a little bit.

Let me get to Mr. French. I have a follow-up, Mr. French, about Exhibit 18.<sup>1</sup>

When you were interviewed by staff you explained the reason that you asked that this document be destroyed is that you were worried the instructions from the protectors were becoming too detailed; is that correct?

Mr. FRENCH. I think that is not quite what I said, Senator. First of all I do not specifically recall this situation, because it was 11 years ago in terms of the specific conversations. But I was concerned—I had become concerned with the whole issue of making recommendations. These were fairly specific recommendations. And I just was not that happy with being asked to continue to make these sorts of recommendations.

<sup>1</sup> See Exhibit 18 which appears in the Appendix on page 769.

Senator COLEMAN. Again, the recommendations came from the Wyllys to you, and you then forwarded them on to the trustees who then, invariably, on almost every occasion, executed the recommendations; is that correct?

Mr. FRENCH. That is correct. To the extent that I was involved in recommendations, that is correct.

Senator COLEMAN. The Ranking Member raised the issue of protectors recommending personal property purchases, in one case a painting. I am reflecting on something that was in the *Wall Street Journal* yesterday, I am not going to give that automatic credence. I am rather going to ask you.

The paper noted that, in 1996, Sam Wyly successfully bid at Sotheby's for a painting by John William Godward. Shortly thereafter, another Wyly-funded company in the Cayman Islands sent a letter to Mr. Buchanan at Lorne House stating, "The protectorate committee recommended buying the painting." The article goes on to note that Buchanan responded a few days later questioning whether the painting was a wise investment. Then the article says he received a strong letter from Mr. French stating that "we need to resolve this issue at once," and insisting that Mr. Buchanan had "no legal grounds to question this transaction."

Did you, in fact write a letter to Mr. Buchanan regarding the painting by John William Godward?

Mr. FRENCH. I do not recall the painting but the answer is yes. I think it is one of the exhibits around here someplace or it is referenced in this report. I am looking for it right now but I cannot quite find it.

That letter basically pointed out to Mr. Buchanan that under the terms of the trust, the instrument, the trust was permitted to do these kinds of transactions.

Senator COLEMAN. But Sam Wyly himself in this regard was worried very strongly about purchasing this painting; is that correct? You were not reflecting your own personal feeling about this painting. You had been instructed by the Wyllys to push this matter.

Mr. FRENCH. I had no personal feelings about the painting, Senator.

Senator COLEMAN. Did Mr. Buchanan, in fact, apologize to you about this afterwards?

Mr. FRENCH. Again I cannot find the document.

Senator COLEMAN. I think Exhibit 44 is the document.<sup>1</sup>

It reads, "Attached is language from the Deed of Settlement of the Bessie Trust. This language clearly authorizes a purchase of personal property for personal use and enjoyment," etc., "unless there is a clear and unequivocal requirement of IOM law (which I doubt), that any such purchase that is specifically authorized by the trust agreement must nevertheless be weighed against the investment," etc. "The protectors have already recommended this transaction. Please advise if you are unwilling to proceed on that basis in light of the explicit authorization for the transaction contained in the Trust Deed."

Were you directed to prepare this message to Mr. Buchanan?

<sup>1</sup> See Exhibit 44 which appears in the Appendix on page 1011.

Mr. FRENCH. It was my instruction, yes, to contact the trustee and see to it that this was accomplished, because it was permitted by the trust agreement.

Senator COLEMAN. Again, you are not providing legal counsel here, but it is similar to the question that the Ranking Member asked Mr. Saban and Mr. Johnson. You are watching this go on, you are making very specific recommendations, and you have some knowledge that these trusts are supposed to have some independence.

At some point, do you say to yourself that a line is being crossed here? When detailed, specific instructions are not being followed, you come back with stern warnings. Viscerally and internally, did a light not go on and say, "We are crossing a line here that should not be crossed?"

Mr. FRENCH. Not in connection with this particular transaction, Senator. I am not sure where I can go with what my feelings were here as we got into the later part of the 1990s, because that may be getting into these attorney-client privilege issues.

Senator COLEMAN. I am not asking you about any advice you gave the Wyllys. Just internally, your own internal sense, did you have sense that these recommendations were too specific, too direct, and were you concerned about crossing a line?

Mr. FRENCH. I was concerned. Whether they were or they were not, I cannot say because we had been advised long ago by the counsel that was involved in this that this—I have been advised by the counsel that were involved in this that this was OK. Notwithstanding that, it began to trouble me.

Senator COLEMAN. Senator Levin.

Senator LEVIN. Thank you.

First, Mr. French, I made a reference to Exhibit 4 in the first direction that was given by you to the nominal trustees, where it said, "Mike French and I would like to recommend to the trustee to purchase the following security and one of the following corporations owned by the Bulldog trust."

And then, underneath it says, an October 9, 2002 letter. That is a misprint and we will correct that. You said you were not there in 2002. It should have been 1992.

Mr. FRENCH. It was probably 1992. Yes.

Senator LEVIN. Do you remember that, now that it is 1992?

Mr. FRENCH. I still do not remember it.

This was right after these, not too long after these trusts were set up. And again, the advice to me from the counsel who set all of these up was that it was OK to make these kinds of recommendations.

Senator LEVIN. The exhibit that this refers to, by the way, is exhibit 11a, where you got a copy of the letter to the trustee from Cheryl Robertson, which is—we are on Exhibit 11a, it says, "Carbon copy, Michael French."<sup>1</sup>

Mr. FRENCH. Yes. Is this the one about the Photomatrix Corporation?

Senator LEVIN. Yes. But you still do not remember that one?

<sup>1</sup> See Exhibit 11a which appears in the Appendix on page 741.



Mr. FRENCH. I thought you had referenced that other one and I apologize, Senator. Yes. I recall this.

Senator LEVIN. Where did that recommendation to you come from—that request, come from?

Mr. FRENCH. I do not specifically remember. I believe it came from Shari Robertson.

Senator LEVIN. Where would she have gotten it from?

Mr. FRENCH. From Mr. Wyly.

Senator LEVIN. Which one? Which Wyly would that have been?

Mr. FRENCH. Probably Sam Wyly, since it says to buy the security from Sam Wyly.

Senator LEVIN. Mr. Saban, I just want to be real clear on the motive—your motive and the reason and rationale for entering into this transaction. Am I real clear that the purpose of your entering into this transaction was that it was to reduce taxes?

Mr. SABAN. That is correct.

Senator LEVIN. Now, were you told by the Quellos people that the source of the securities portfolio was a series of book entry trades that involved no real stock and no real cash? Were you ever informed of that?

Mr. SABAN. No.

Senator LEVIN. Would you take a look if you would, Mr. Saban, at Exhibit 63b.<sup>1</sup>

Mr. SABAN. Is there a tab on 63b? Because I only see 63.

Senator LEVIN. You do not see a 63b on there?

Mr. SABAN. There is no tab.

Senator LEVIN. I just want to make sure that is a document that you signed. It is called: “Haim Saban Representation Certificate for Titanium Trading Partners LLC Federal Income Tax Opinion.”

Mr. SABAN. Thank you.

Senator LEVIN. I guess that is the last page in the book.

Mr. SABAN. That is my signature.

Senator LEVIN. Did you read that document?

Mr. SABAN. No.

Senator LEVIN. That document purports to relate to an investment of some kind. But the investment that was made here was just so the tax shelter would “hold water?”

You did not get into this whole deal to make money, other than the benefit that you intended to receive from the tax loss; is that correct?

Mr. SABAN. That was the main purpose.

Senator LEVIN. Was there any other purpose?

Mr. SABAN. There was a theoretical possibility of making money on the transaction of buying and selling stock.

Senator LEVIN. That was not what motivated you; is that fair to say?

Mr. SABAN. No.

Senator LEVIN. That is fair to say that, then?

Mr. SABAN. That is fair to say.

Senator LEVIN. All right. Thank you.

<sup>1</sup> See Exhibit 63b which appears in the Appendix on page 1287.

Now, Mr. Johnson, did Quellos ever inform you that the source of the security's portfolio was a series of book entry trades involving no real stock and no real cash?

Mr. JOHNSON. No.

Senator LEVIN. Mr. French if you would take a look at Exhibit 38 for me.<sup>1</sup>

This is a chart that we have. Number 8 is taken from this exhibit. This relates to the Bulldog Trust.

Mr. FRENCH. I have the exhibit.

Senator LEVIN. All right.

This was prepared I guess after you left by a Wyly trustee. He prepared a document describing the Bulldog Trust, which was a 1992 trust. If you look at Exhibit 38, you will see the first line there says that, "The Bulldog Trust was created by a trust agreement dated March 11, 1992, between Sam Wyly, a wealthy U.S. person, and Lorne House Trust Company Limited. The current trustee of the trust is IFG International Trust Company Limited."

Then the next paragraph is what I want to ask you about. "The reason for creating the trust was tax driven. Its purpose was to take the assets held/to become held within the trust and various Isle of Man companies owned by it outside of the settlor's estate for U.S. gifts and estate tax purposes and at the same time to create a fund the income and gains of which were not attributable to any of the settlor or his family. The assets within the trust are now very substantial."

Was that an accurate description, from your recollection, of the Bulldog Trust?

Mr. FRENCH. Senator, one of the things I am not an expert on is the attorney-client privilege. Let me make sure I am not stepping over the line again. [Consults attorney.]

Yes. That was my understanding. I apologize.

Senator LEVIN. That is OK. That was an accurate statement of the Bulldog Trust?

Mr. FRENCH. Yes.

Senator LEVIN. It was tax driven?

Mr. FRENCH. Yes.

Senator LEVIN. Thank you, Mr. Chairman.

Thank you again, all the witnesses. I do not know if Senator Lautenberg has any questions.

Senator COLEMAN. Senator Lautenberg.

Senator LAUTENBERG. I will be brief, Mr. Chairman.

Once again it is obvious that our friends with the professional talent that they call upon would not knowingly do anything that it was illegal, that was against the law. And I respect that. The legal question is not one that I am looking at here at all.

But there is something that goes beyond the legality that talks about what other kinds of obligations that one has. It is a strange anomaly, because I see two gentleman before me who have a conscience and have a commitment to America. But yet, in this world of acquisition and, if I may say, even greed, there are things that are maybe legal but I do not think are appropriate or, to use a trite word, nice.

<sup>1</sup> See Exhibit 38 which appears in the Appendix on page 990.

Mr. Chairman, I come away with the conclusion that if things bear out what is said here, that is, that there is a lack of awareness which I find shocking for such good businesspeople not to know they were getting a super deal on something that beats all of the odds and that permits them to avoid responsibility to provide their share of the load that we all have as citizens in this country.

And I think that is something I have learned, Mr. Chairman, that is, that we can point fingers here for bad judgment, but I think we have to look at the IRS and its enforcement process and see how lack of diligence was permitted because these things should never have escaped. And maybe we have to change the laws and we should do it—the tax law. But we also want to make sure that the Department of Internal Revenue knows that it has a responsibility to go after people and not be content with shortcuts, and resources, and movement of people that arouses suspicion within the framework.

So, there is a lesson I think that we are all learning from this investigation and these hearings. And once again, I commend my colleagues Senator Coleman and Senator Levin for their diligence and thoroughness in this pursuit.

Mr. Chairman, that concludes my interest in the questioning of these witnesses.

Senator COLEMAN. Thank you, Senator Lautenberg.

I would just note, from the last comments upon Exhibit 63 in which you signed your representation certificate. That is based on an 80-page opinion. I take it you did not read the 80-page opinion.

Mr. SABAN. I did not.

Senator COLEMAN. This is the 80-page opinion that told you this deal was kosher?

Mr. SABAN. That is what my adviser told me.

Senator COLEMAN. I want to thank all of the members of this panel. I appreciate your cooperation with this investigation. We appreciate your appearing here today. We understand the difficult circumstances under which you appeared in front of this Subcommittee—Mr. French, particularly—this Subcommittee is appreciative of all your efforts and cooperation.

With that, this panel is excused.

I would like to call our fourth panel of witnesses.

Louis Schaufele is a securities broker, formerly with the Bank of America, Credit Suisse, First Boston, and currently with Stanford Group Co.

Jeffrey Greenstein, Chief Executive Officer of the Quellos Group.

Michael Conn, Bank of America's Private Bank, Northwest Region President.

And finally, George T. Wendler, Senior Executive Vice President, and Chief Credit Officer of HSBC Bank, U.S.A.

Mr. Schaufele was a securities broker for various offshore accounts associated with the Wyls. I am looking forward to hearing details about securities transactions involving Wyly-related offshore corporations.

I am concerned that efforts were made to circumvent or avoid Federal security laws reporting.

Mr. Conn, I am eager to hear your understanding of various security transactions involving Wyly-related offshore accounts, and

whether the Bank of America properly complied with anti-money laundering requirements.

Mr. Greenstein, I want to thank you for coming this morning. I recall that you testified before us in 2003 during our previous investigation into tax shelters. I do have questions about the Quellos-designed POINT strategy, which appears to have been designed to offset capital gains and minimize taxes. I am looking forward to your testimony this morning.

Mr. Wendler, I am looking forward to hearing about your understanding of the POINT transaction, as I want to understand the extent to which banks should be concerned with providing financial services to support highly aggressive tax transactions.

I want to, again, thank you all for coming to this important hearing. I look forward to your testimony.

Pursuant to Rule 6, all witnesses before this Subcommittee are required to be sworn at this point. I would ask you all to please stand and raise your right hand.

Do you swear the testimony you are about to give before this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God.

Mr. SCHAUFEELE. I do.

Mr. CONN. I do.

Mr. GREENSTEIN. I do.

Mr. WENDLER. I do.

Senator COLEMAN. Again, we will be using a timing system. I would like you to keep your remarks to within 5 minutes. Your entire written statement will be entered into the record, as a whole. When the lights go from green to amber, that will tell you that you have about a minute left and you should conclude your testimony.

Mr. Schaufele, we will have you go first, followed by Mr. Greenstein, then Mr. Conn. We will finish up with Mr. Wendler. After we have heard your testimony, we will turn to questions.

Mr. Schaufele, you may proceed.

#### **TESTIMONY OF LOUIS J. SCHAUFEELE, III, SECURITIES BROKER.**

Mr. SCHAUFEELE. Thank you so much, Mr. Chairman and Senator Levin, for the invitation.

One thing I would like to correct early on, I believe that in employment history, you stated that I was currently at UBS. I am actually at Stanford Management Group.

Senator COLEMAN. That will be corrected in the record, Mr. Schaufele.

Mr. SCHAUFEELE. Mr. Chairman, I voluntarily met with the Subcommittee staff twice, and I have come today to answer questions that the Subcommittee may have. I have provided everything that the Subcommittee staff has asked of me.

My work with the offshore companies has been subject to the compliance and guidance requirements of the firms where I have been employed.

I welcome whatever questions the Subcommittee may have, and will do my best to answer them. Thank you.

Senator COLEMAN. Thank you, Mr. Schaufele. Mr. Greenstein.

**TESTIMONY OF JEFFREY GREENSTEIN,<sup>1</sup> CHIEF EXECUTIVE OFFICER, QUELLOS GROUP, LLC, SEATTLE, WASHINGTON**

Mr. GREENSTEIN. Chairman Coleman, Senator Levin, Members of the Subcommittee, my name is Jeff Greenstein. I am Chief Executive Officer, Quellos Group, and I appear here voluntarily.

Quellos is an investment management firm founded in 1994 and headquartered in Seattle. Globally, we employ 270 people and manage more than \$15 billion in assets for financial institutions, private and government employee pension plans, university endowments, foundations, and private clients. For several months, Quellos has cooperated with the staff of the Subcommittee during its review of a tax advantage strategy called POINT. Quellos employees voluntarily participated in interviews and we produced tens of thousands of pages of documents.

Yesterday, the staff of this Subcommittee issued its report. We believe the report is unfair, one-sided, and inaccurate. I apologize in advance if I seem frustrated, but from my position, and I am neither a lawyer nor a tax expert, the report seems to have glossed over several basic facts. Unfortunately, I don't have time in my opening statement to address all the mistakes and errors, but in my limited time, I wanted to briefly describe the POINT transaction and then highlight some of the fundamental errors.

Six POINT transactions were executed 5 to 6 years ago by Quellos Custom Strategies, a small and now dormant subsidiary of the firm. The transaction combined a popular investment strategy with a tax strategy frequently executed in the United States by major investment banks. This Subcommittee should be aware of a couple fundamental aspects as it relates to POINT.

These transactions were executed based on extensive consultation with leading tax lawyers, several of whom gave tax opinions approving the transactions. Each transaction had substantial opportunity for economic profit. Indeed, the report acknowledged that millions of dollars in gross trading profits were earned. Every client consulted his or her own professional advisors regarding the strategy. In fact, several directed us to communicate with their chosen advisors, and as a result, each of the transactions had significant differences. And finally, from the outset, we told the IRS about POINT by registering it.

Let me now address several glaring problems with the staff report. First, the report indicates inaccurately that the POINT transaction is a black box that Quellos and others sought to hide from the U.S. Government. Nothing could be further from the truth. Almost 6 years ago, we registered the POINT transaction with the IRS as a tax shelter. We shared with the IRS information required by its disclosure regulation, and as a result, the IRS is reviewing this transaction. Thus, as opposed to being a black box, POINT was disclosed by us to the Federal Government early on.

Second, the report suggests that the POINT transaction did not offer an opportunity for profit. In fact, POINT gave investors the potential either to earn profit or losses incurred based solely on market fluctuations. For the report to suggest otherwise is flat out wrong.

<sup>1</sup> The prepared statement of Mr. Greenstein appears in the Appendix on page 142.

Third, the report erroneously characterizes book entry transactions as fake. Every day, trillions of dollars of securities, commodities, and Treasury obligations are traded on a book entry basis. Over-the-counter derivatives and swap transactions are contracts that obligate parties to pay amounts based upon market movements in the underlying security or commodity involved. Because POINT had real opportunities for profit and loss, we and the clients or their advisors closely followed their portfolios.

Finally, the report criticizes our involvement with offshore entities. However, we worked with and relied upon the European-American Investment Group because of its reputation—because of the reputation and broad experience of the principals in the over-the-counter markets. Euram assured us about its abilities to establish the portfolio. Euram, not us, selected the offshore entities, and Euram, not us, vouched for the abilities of those entities to engage in the transaction. Barnville and Jackstones satisfied their financial obligations to the partnerships, including the payment of millions of dollars and the delivery of shares when requested.

Quellos is a well-regarded investment advisor. It has not implemented POINT or any similar transaction since 2001. Quellos has established an independently advised transaction review committee to review transactions with tax aspects. We take these issues and our reputation seriously.

I hope these remarks have put things in better perspective, Mr. Chairman, Senator Levin. Thank you again for giving Quellos the opportunity to speak here today.

Senator COLEMAN. Mr. Conn.

**TESTIMONY OF MICHAEL G. CONN,<sup>1</sup> PRIVATE BANK NORTHWEST REGION PRESIDENT, BANK OF AMERICA, SAN FRANCISCO, CALIFORNIA**

Mr. CONN. Good morning, Chairman Coleman, Ranking Member Levin, and Members of the Subcommittee. I appreciate the invitation to appear before the Permanent Subcommittee on Investigations to discuss certain domestic brokerage accounts maintained by offshore private investment corporations that are the subject of the Subcommittee's letter.

My name is Michael Conn and I am a Regional President of the Private Bank of America. I have spent 26 years in the brokerage business and have been in private banking for the last 4 years.

I would like to begin by emphasizing that Bank of America takes very seriously its regulatory obligations to know its customers, report suspicious activity, and assist law enforcement and its regulators in the fight against money laundering and other illegal activity. We are committed to improving our systems and process in an ever-changing and challenging world.

We believe that our cooperation with the Subcommittee staff during the last year is an example of the bank's commitment to cooperation with regulatory and law enforcement authorities. The bank fully recognizes that its delay in demanding specific beneficial ownership information from the customers of the brokerage accounts that we will discuss today was inconsistent with the bank's

<sup>1</sup> The prepared statement of Mr. Conn appears in the Appendix on page 147.

commitment to knowing its customer. As I will explain in a moment, a number of factors explain but do not excuse the delay in demanding this information.

Upon review of the facts here, senior management instructed bank personnel to demand that the customers provide the beneficial ownership information, ordered that the accounts be closed when the customers did not provide the information, and directed that significant remedial action be taken. Moreover, we have made numerous changes in response to the issues we identified during our review of our conduct with respect to these accounts.

The Subcommittee has asked us to testify about the bank's relationship with Sam and Charles Wyly. The Wyly relationship with the Private Bank began in 1994. It included checking and savings accounts, lines of credit, and mortgages. The Private Investment Corporation (PIC) accounts were transferred to Bank of America Securities (BAS) in February 2002, when BAS hired a broker from another financial institution who brought the accounts with him. The broker understood that the PICs were owned by trusts that were endowed by Charles and Sam Wyly for the benefit of the Wyly family members. The bank's policies at the time were less stringent than they are today and did not always require that beneficial ownership information be obtained at account opening. In this case, the bank did not obtain specific beneficial ownership information as we would today.

In August 2003, these accounts were transferred as part of a wholesale move of all retail accounts from BAS to BAI. NFS is the clearing firm for Bank of American Investment Services (BAI). In 2004, NFS asked BAI compliance for certain information concerning certain of the PICs, including beneficial ownership information. The inquiries led to a dialogue between BAI associates, in-house lawyers, and compliance personnel in NFS. This dialogue continued for months, as various alternative proposals for obtaining the beneficial ownership were considered. The customers' representative maintained that they were not required by law to disclose such information, even if the information was required by BAI's policies. The customers told BAI through the broker and other BAI associates that their reluctance to provide this information was motivated by confidentiality and asset protection considerations.

Ultimately, BAI decided to require the customers to provide specific beneficial information. BAI and NFS agreed upon a list of questions to send to the customers requesting beneficial ownership information and other information about the accounts. Around this time, the bank received governmental inquiries relating to these accounts. When senior management became involved, the bank demanded beneficial ownership information from the customers. When the customers did not provide this information, BAI closed the accounts. The bank also decided to terminate its broader private banking relationship with the Wyllys.

The bank recognizes that, looking back, this process took way too long and it is difficult to understand the delay. In evaluating the delay, it is important to consider several important factors. BAI associates had a good faith belief that the accounts were not being used for illegal activity, which meant that the BAI personnel did

not view this issue as requiring immediate resolution. The Wyly family had a longstanding private bank relationship. The Wyly brothers are well-known businessmen and philanthropists in the Dallas community and nationally. There were extensive discussions between BAI and the customers and their representatives as to whether the beneficial ownership was legally required. The customers, through their representative, maintained that other similar institutions did not require such information.

Ultimately, the bank took remedial action. As mentioned previously, the bank closed the accounts for the PICs and the broader Wyly relationship. The bank also took disciplinary action and personnel action with respect to BAI associates who were involved with discussions on this issue and did not immediately demand that the customers provide beneficial ownership information.

Following a review of the facts underlying this matter, the bank took numerous other remedial steps, including improving compliance processes and structures, improving lines of communication with NFS, improving training, enhancing account opening and closure procedures, review of certain accounts, including PICs. Chairman Coleman and Senator Levin and others, I am now prepared to answer questions and welcome the opportunity to discuss these issues with you. Thank you.

Chairman COLEMAN. Thank you very much, Mr. Conn. Mr. Wendler.

**TESTIMONY OF GEORGE T. WENDLER,<sup>1</sup> SENIOR EXECUTIVE VICE PRESIDENT AND CHIEF CREDIT OFFICER, HSBC BANK USA, MARLBORO, NEW JERSEY**

Mr. WENDLER. Thank you, Mr. Chairman, Senator Levin, and Members of the Subcommittee. My name is George T. Wendler. I am Senior Executive Vice President and Chief Credit Officer for HSBC Bank USA, N.A. I am here primarily to answer the Subcommittee's questions about the bridge loan and derivative collar services that HSBC provided to two Quellos-advised clients between the years 2000 and 2002.

Bank personnel have only recently learned of Quellos using the phrase POINT strategy to describe a series of transactions that included our bridge loan and derivative collar services. I will also describe briefly the changes in law and bank policies that have occurred since the transactions took place. Because of those changes, HSBC would not provide support for the Quellos-advised POINT transactions if we were presented with them today. HSBC is committed to ensuring that it operates its business in full compliance with applicable laws and regulations and in accordance with best practices to limit the risk of our bank's involvement in abusive tax shelters.

I was Chief Credit Officer of HSBC Bank USA between 2000 and 2002 and I serve in that role today. I trust the Subcommittee will understand that my business expertise is in credit matters and not in compliance or know-your-customer matters. I also was not the client contact or relationship officer. As a result, some of the information from my testimony was provided to me by bank personnel.

<sup>1</sup> The prepared statement of Mr. Wendler appears in the Appendix on page 155.



They have greater knowledge than me on such matters. Having said that, I will do my best to answer all of your questions.

HSBC's domestic private bank was approached by the Quellos Group in the fall of 2000. It was asked to make a competitive bid on a bridge loan and derivative collar for a very high net worth Quellos client. The private bank was told that the client needed short-term financing to make an investment and that the collar was part of the investment strategy. During the course of negotiations for the loan and collar, the private bank learned more about the transaction. It learned that some of the Quellos-advised transactions involved acquisitions of LLC units and underlying technology stocks from Isle of Man companies and that a potential benefit would include U.S. tax deferral as well as an investment gain opportunity.

HSBC was not the client's tax advisor. Consistent with HSBC policies at the time, the private bank took steps to determine that the bank's transactions with the client would be adequately collateralized, that they were highly likely to be repaid, and they were being entered into with reputable individuals and entities. This included personal meetings with the clients and consultations with other involved entities.

The private bank also insisted that the flow of funds and stocks take place in cash and custody accounts established and monitored by HSBC, that the private bank's internal and external counsel have the opportunity to review a tax opinion from a leading U.S. law firm before the transactions were executed, that the client acknowledge in writing that it was relying on independent tax and investment advice, and that it was not relying on any such advice from HSBC. HSBC also took steps to determine that the private bank itself had no tax shelter registration or any other tax reporting obligations relating to the transaction.

The private bank did provide a loan and collar in the 2000 transaction and again in a larger 2001 transaction involving a second Quellos client. Finally, HSBC provided a collar to the first client again in a similar 2002 transaction.

We believe our involvement, level of review, and diligence with respect to these transactions was lawful and consistent with general industry standards at the time. We are confident that the bank complied fully with its legal obligations.

But I want to emphasize that for any similar proposal today, the bank would take significant additional steps. This is in part because the law has changed. For example, large loss transaction now require additional IRS reports, and know-your-customer and diligence requirements are more robust. They have new emphasis on complex structured finance activities. In addition, HSBC's prudential requirements for diligence, lending and structuring services are significantly different today. In retrospect, there were some warning signs. Today, they would lead us to make additional inquiries and analyses concerning the underlying transactions and parties involved. If presented with the POINT transaction today, we would not participate.

My written statement provides additional descriptions of our current credit approval and compliance policies. There was a December 2005 letter to our private bank managers that provides a good

summary of HSBC's standards today. I quote from that letter. "No customer or business arrangement is worth our reputation. Knowing our customers makes good business sense and helps us preserve our reputation for integrity and fair dealing. This responsibility cannot be delegated or abdicated and should never be taken lightly." Let me assure the Subcommittee that HSBC does its best to live up to those standards in its daily business dealings.

Thank you for the opportunity to appear today. I will be pleased to answer any of your questions.

Chairman COLEMAN. Thank you very much, Mr. Wendler.

I wonder if we could look at Exhibit 5 regarding the POINT strategy.<sup>1</sup>

Mr. Greenstein, I am going to start with you, and there is a lot that we need to cover in this panel. One, is it your testimony that the POINT transaction represented a popular investment strategy?

Mr. GREENSTEIN. My testimony was some of the initial genesis of the POINT transaction represented a popular investment strategy from Western Europe, and that was a piece of the transaction.

Chairman COLEMAN. But we have heard testimony that the purpose of the POINT strategy from the investors', the clients' perspective, was tax deferral. Tax avoidance was the purpose of POINT, is that correct?

Mr. GREENSTEIN. Clearly, tax deferral was a key objective. There were investment opportunities associated with it, as well.

Chairman COLEMAN. But clearly, the investment opportunities were de minimis. You heard both Mr. Johnson and Mr. Saban talking—do you believe they had any intent or any belief that this was an investment opportunity?

Mr. GREENSTEIN. There was, as I said, clearly tax deferral. Once the clients, and in the case of Mr. Johnson and Mr. Saban, we talked to their advisors on a regular basis, once they had the profit and loss exposure associated with the equity securities, we talked to many of the clients almost daily because they were very concerned about the price movement in those securities. So while the tax deferral component was a large and important factor, there nonetheless was a profit and loss opportunity and it is not inconsistent for there to be investment attributes as well as tax attributes in a strategy.

Chairman COLEMAN. Now, the transactions between Jackstones and Barnville, both Isle of Man entities, were what one would call netted or circular transactions. In other words, stock wasn't actually exchanged. What Jackstones purported to own, \$9.6 billion of shares, Barnville purports to buy, but Barnville loans the same securities back to Jackstones, which loans Barnville back the purchase price—no cash and no services are actually transferred, is that correct?

Mr. GREENSTEIN. These transactions that you are referring to were legal contracts, not dissimilar to swaps or contract for differences or single stock futures, where in all of those cases there is no cash transfer but there is a legal obligation and there is no ownership transfer of specific entities unless the delivery is re-

<sup>1</sup> See Exhibit 5 which appears in the Appendix on page 677.

requested. And in the case of these transactions, when clients requested delivery, the delivery of the shares was made.

Chairman COLEMAN. Were you aware that Jackstones and Barnville were capitalized with two pounds, five dollars? That is the extent of capital in these—

Mr. GREENSTEIN. No, I don't believe that representation is correct. That would be analogous if the par value, say, in a stock in the United States, is a penny, the assets of the company and the share value could be significantly more. So I believe that amount represented the amount that the company was formed with but did not represent the assets, and we received assurances from the professionals at European American Investment Group that the entities had the wherewithal and the willingness to enter into the various contractual obligations.

Chairman COLEMAN. Did you know that—and again, you talk about the willingness and the wherewithal—these were net obligations between Jackstones and Barnville. You could have picked 9.5 billion. You could have picked X-billion, whatever it was. In effect, the obligations went back and forth and there was no net profit or anything to be made on this.

Mr. GREENSTEIN. They entered into the transactions and then hedged those transactions and we reviewed—it is my understanding that these transactions, the nature of the transactions were reviewed extensively with the lawyers involved and opining on the transaction.

Chairman COLEMAN. Did you share that with clients?

Mr. GREENSTEIN. Yes, with the clients' advisors. It is my understanding—I had, again, very little interaction with many of the advisors, but it is my understanding we went through these in detail, and in fact, one of the clients asked for verification along those lines and Euram went out and hired one of the top U.K. chartered accounting firms to actually verify the books and records of Euram—excuse me, Barnville and Jackstones as it related to the contractual obligations.

Chairman COLEMAN. Mr. Wendler, looking at Exhibit 60b,<sup>1</sup> Barnville and Jackstones, Limited were Isle of Man companies, each owned by trusts with mutually overlapping boards. Were you aware of the netting transactions and the nature of the relationship between Jackstones and Barnville?

Mr. WENDLER. No, sir.

Chairman COLEMAN. And you have indicated, if presented with the POINT strategy today, you wouldn't go forward with that strategy, would you?

Mr. WENDLER. Yes, correct.

Chairman COLEMAN. I have more questions. Let me turn to another avenue of inquiry, but we will come back to this.

Mr. Schaufele, I am trying to understand this issue of control in regard to security transactions. I understand from the testimony from Mr. French that the protectors would make recommendations to the trustees and ultimately the trustees would approve those recommendations, is that correct?

<sup>1</sup> See Exhibit 60b which appears in the Appendix on page 1190.

Mr. SCHAUFEELE. What I understood was the protectorates would make a recommendation to the trustee and the trustee then would make an order or whatever to me. That is correct.

Chairman COLEMAN. Now, you understood this issue of being an independent entity, is that correct?

Mr. SCHAUFEELE. That is correct.

Chairman COLEMAN. There had to be independence here. If I can turn to Exhibit 21a,<sup>1</sup> when you changed jobs from Lehman Brothers to Bank of America in 2002, you informed the Wyls that their offshore accounts were being transferred to Bank of America as totally separate entities without any linkage. Can you explain what you meant when you said that?

Mr. SCHAUFEELE. Yes. As you heard, the onshore, the Wyly family onshore was a large client of Bank of America. They were a large creditor to Bank of America. The offshore was moving assets to Bank of America. The family wanted to make sure that these were treated totally separately, i.e., if there was a default by the onshore of one of their loans, that the bank wouldn't go in and grab these offshore assets.

Chairman COLEMAN. But you note in the—you noted that you want this to be sent to Charles and Sam. While the accounts were at Lehman, Lehman came to view some of the accounts as linked. Lehman went so far as getting counsel from Michael's on the phone to see if they viewed the offshore accounts as affiliates. Even though the counsel did not view the offshore as affiliates, Lehman chose to treat them as affiliates.

Mr. SCHAUFEELE. And what—that happened in a transaction that we were proposing to both the Sam Wyly and to the Devotion, that Lehman viewed that the relationship between Sam and Devotion was going to be an affiliate relationship. We got counsel on the phone, all right. Sam then chose to proceed with the transaction on his side, which was just selling it. Devotion did nothing. Then nothing happened from the standpoint, from a Lehman's standpoint of were they viewing these accounts as affiliates.

If Lehman had chosen to view these as affiliates, we would have had to—I would have been instructed to treat them differently, whether that is in increased margin costs, transactions, etc., and no instructions came from Lehman after that. So it was somewhat dropped, sir.

Chairman COLEMAN. Wasn't, though, the purpose of this treatment of accounts as separate entities to make sure they would not be considered affiliates of Michael Stores under SEC regulations with limited transactions involving company stock held by corporate insiders?

Mr. SCHAUFEELE. I am sorry, would you say your question again?

Chairman COLEMAN. Sam Wyly and others, they are corporate insiders in terms of Michael's, right?

Mr. SCHAUFEELE. Correct.

Chairman COLEMAN. They are doing transactions in these offshore accounts and there are SEC regulations that limit transactions involving company insiders.

Mr. SCHAUFEELE. Correct.

<sup>1</sup> See Exhibit 21a which appears in the Appendix on page 777.

Chairman COLEMAN. And did the Wyls comply with these SEC regulations regarding limitations on insider trading?

Mr. SCHAUFLE. The offshore entities, all right, we had counsel from both internal counsel of Michael Stores and their outside counsel of Michael Stores and Lehman Brothers and subsequently Bank of America legal people say that they felt that they were not affiliates.

Chairman COLEMAN. So Sam Wyly is making specific recommendations about the sale of Michael's options, Michael's stock, and the opinion is that they are not affiliates?

Mr. SCHAUFLE. No, sir. Sam Wyly never made specific recommendations to me. The recommendations came from the trustee or the protectorate.

Chairman COLEMAN. Your testimony is that the recommendations about these sales came from the trustees and from the trust protectors?

Mr. SCHAUFLE. That is—and the trustees, yes.

Chairman COLEMAN. And Mr. French testified as a trust protector that the recommendations came directly from Sam Wyly.

Mr. SCHAUFLE. To the protectors. I had no contact with Sam or Charles regarding any orders or anything of that nature.

Chairman COLEMAN. If we look at Exhibit 5,<sup>1</sup> I think the directions are from Sam Wyly, not the protectors. This is a 4/26/2000 e-mail from Evan Wyly. "Sam recommends the trustees exercise and sell the remainder of the Michael options at \$40 or better." Sam wants additional cash in Edinburgh so it is up to \$20 million by the anniversary date. Fund it with offshore cash since it will take time. He wanted to know what he expects. Just spoke to Sam, he recommends proceeding with the exercise of sale of 1250 Michael options held by offshore entity . . ." All of these recommendations were communicated to trust protectors and communicated to trustees and were executed.

Mr. SCHAUFLE. Correct.

Chairman COLEMAN. Your testimony is that you were not aware that these recommendations were coming from Sam to the trust protector?

Mr. SCHAUFLE. That is correct.

Chairman COLEMAN. All right. I have no further questions at this time. Senator Levin.

Senator LEVIN. Thank you, Mr. Chairman.

Chairman COLEMAN. Because my time has expired, but we will come back to this line of questioning.

Senator LEVIN. Mr. Greenstein, would you take a look at Exhibit 49d?<sup>2</sup>

Mr. GREENSTEIN. Yes, Senator.

Senator LEVIN. Now, 49d is a series of e-mails in May 2000 between you and your Quellos associates, Chuck Wilk and Larry Scheinfeld, is that correct?

Mr. GREENSTEIN. Yes.

Senator LEVIN. Mr. Scheinfeld writes, if you look at the bottom of that page where the correspondence begins, "It looks like we

<sup>1</sup> See Exhibit 5 which appears in the Appendix on page 677.

<sup>2</sup> See Exhibit 49d which appears in the Appendix on page 1078.

have no more room on the POINT trade. We would be very careful about selling any more." When he says no more room, what does he mean by that?

Mr. GREENSTEIN. That there was a portfolio where the high basis was different than the fair market value of the stock, and because, again, looking back at these periods in the market, technology and telecommunications stocks were extremely volatile, so that basis differential was changing literally on a daily basis. So it could be, for example, that the market rallied significantly and there would be no more basis differential or opportunity—

Senator LEVIN. What was the limit that you could reach in that portfolio? Was it \$9 billion?

Mr. GREENSTEIN. No. It was really a function of—

Senator LEVIN. What was the number, dollar? The limit. How much could you sell?

Mr. GREENSTEIN. It was a function of the market prices for it to be—

Senator LEVIN. Approximately what was it?

Mr. GREENSTEIN. I think it was—and it varied over different periods of time—maybe a billion dollars, a billion-five, maximum.

Senator LEVIN. Didn't Mr. Saban alone have a tax loss of a billion-five?

Mr. GREENSTEIN. To the best of my understanding, the basis differential using the stocks that we did amounted to about \$1.3, \$1.4 billion in deferral.

Senator LEVIN. And that is the list you put together?

Mr. GREENSTEIN. That was the portfolio. So when—

Senator LEVIN. Did you put that portfolio together?

Mr. GREENSTEIN. Yes. I put the portfolios together.

Senator LEVIN. And then you sent those portfolios over to Euram?

Mr. GREENSTEIN. Well, what we did, if we start, we entered a series of transactions on a large portfolio. Some of the prices of the portfolio appreciated. Some of them depreciated. For each one of the POINT transactions, a diversified basket of stocks were taken out of that larger pool. So I was involved with both of those.

Senator LEVIN. You would take out that basket?

Mr. GREENSTEIN. Yes.

Senator LEVIN. Which would have a loss in it?

Mr. GREENSTEIN. It would have a differential—

Senator LEVIN. Which was a loss?

Mr. GREENSTEIN. An unrealized loss, yes.

Senator LEVIN. Unrealized loss. And then that loss differential, as you put it, was sent over to Euram?

Mr. GREENSTEIN. No. That—

Senator LEVIN. How did that get to Euram?

Mr. GREENSTEIN. That loss, and again, it is my understanding because I am not a tax expert on the nuances of the transaction, but those positions were put into a partnership that U.S. investors—

Senator LEVIN. You are way ahead of the game.

Mr. GREENSTEIN. Sorry.

Senator LEVIN. How did Euram get the list from you? You made up the list. How did it get to Euram? Did you send it to them?

Mr. GREENSTEIN. I communicated that to them, yes.

Senator LEVIN. OK. So you communicated the list—

Mr. GREENSTEIN. Correct.

Senator LEVIN [continuing]. Which had these tax losses in the list to Euram, is that correct? Unrealized tax losses in the list, right?

Mr. GREENSTEIN. Yes, to what stocks.

Senator LEVIN. Right. And you connected the loss to the stocks that you had selected, is that correct?

Mr. GREENSTEIN. If I understand your question, what we would do is build a portfolio that had a basis differential, and that basis differential would reflect the amount of tax deferral the client was seeking.

Senator LEVIN. And that was an unrealized loss, is that correct?

Mr. GREENSTEIN. Correct.

Senator LEVIN. So the clients were seeking losses, is that correct?

Mr. GREENSTEIN. Yes.

Senator LEVIN. And that is why they signed up with your structure, is that correct?

Mr. GREENSTEIN. Yes. The clients that executed the POINT transaction, it is my understanding, had been evaluating a number of different tax deferral strategies.

Senator LEVIN. And the losses here, if you could look back at that Exhibit 49d again, were dependent on—the amount of the loss was dependent on market moves, is that correct?

Mr. GREENSTEIN. Yes.

Senator LEVIN. And the market was moving to reduce the amount of the loss, so you said in this—they said in this e-mail that you better move quickly, is that correct?

Mr. GREENSTEIN. Yes. The 2000–2001 period, particularly in the NASDAQ and technology stocks, was very volatile and—

Senator LEVIN. And you were losing losses there pretty rapidly, right?

Mr. GREENSTEIN. Yes.

Senator LEVIN. Losses were shrinking. And that was bad news for your structure, wasn't it? People had better move quickly. Step up, folks. Get your loss quick before they are all sold out. That is basically what that e-mail says, is that correct?

Mr. GREENSTEIN. Yes. There was limited capacity and it was first come, first serve.

Senator LEVIN. And then it says here that we will try to add more positions to generate losses, right? That is what the goal was, generating losses, right?

Mr. GREENSTEIN. On this structure, yes.

Senator LEVIN. That is a hell of an investment strategy. When you say there is an element of investment strategy here, I have to tell you, it totally runs against every e-mail that you or anyone else wrote, which showed your purpose was to generate losses. I know there was an investment strategy attached to it very minutely. We had the dollars. We got that from Mr. Saban and Mr. Johnson today. That was the detail which you wanted to wag the dog. But it doesn't wag the dog legally. Legally, it has got to be a significant investment strategy in proportion to the loss.

And now let me go back to ask you a question. You then say here that people, unless they move quickly—excuse me. You said that there is only a billion-four in usable losses at the beginning of the morning, but at the close, you only had \$1.15 billion. So you were losing the opportunity to sell your structure quickly in 1 day. You lost the possibility of selling \$285 million of losses, and so the e-mail was saying, we had better get on with this thing and get this sold pretty quickly. Is that the gist of it?

Mr. GREENSTEIN. The e-mail was saying the opportunity is squarely linked to the market price, and the market price is changing—

Senator LEVIN. And they are going up, right? The loss is shrinking today. Isn't that what that e-mail says?

Mr. GREENSTEIN. Today. There were periods during that time period where it was changing—it was going the other way.

Senator LEVIN. Right.

Mr. GREENSTEIN. But the point was, yes, and we had a number of clients who had expressed interest in this transaction and that is what we were communicating.

Senator LEVIN. Right, and did you sell to anybody that didn't need a capital loss?

Mr. GREENSTEIN. No.

Senator LEVIN. That sort of says it all, doesn't it, in terms of any investment strategy?

You are not touting this transaction to people who are trying to invest money and make money on their investment. You are touting this, you are selling this to people who have capital gains and need to offset those capital gains with capital losses, is that not true?

Mr. GREENSTEIN. Yes, that is true, Senator—

Senator LEVIN. All right.

Mr. GREENSTEIN [continuing]. But I would say your question does not accurately characterize the economics because there were, in fact, economics. But as I have stated, the tax deferral element, and as the witnesses earlier stated, was a primary motivator in the transaction.

Senator LEVIN. How do you feel when clients of yours testify in front of us under oath what they went through because of the structure that you sold? What is your reaction to that? You heard here this morning from two business people in this country, when you sold structures to them—one of whom has already had to pay off the IRS for the amount of taxes that he owed plus interest, the other one is negotiating right now—do you have a feeling about that? These were customers of yours.

Mr. GREENSTEIN. These are—these were strategies that, again, the clients, I think as they have testified, were seeking a tax deferral strategy. We were providing that strategy in working with, again, some of, in our opinion, the preeminent tax lawyers in this country on a strategy that was legally permissible to accomplish those objectives.

Senator LEVIN. My question is, what do you feel like when customers of yours testify as they did today? These are people who have had legitimate business careers, who were sold strategies by your company that now are costing them dearly, and, by the way,



should cost them dearly, should cost them, because these are as phony as a three-dollar bill, these strategies. Now, what is your feeling? How do you feel?

Mr. GREENSTEIN. First of all, I disagree with the characterization, but in one of the cases, in Mr. Johnson's case, that was a registered tax shelter.

Senator LEVIN. Do you feel badly when a customer of yours has to settle with IRS, pay the entire amount of the tax gain subject to a capital gains tax and pay interest on top of that? Do you feel anything?

Mr. GREENSTEIN. I think every client or the client's professional advisor clearly understood the risk, the tax risk associated with the transaction and in consultation with the lawyers were comfortable in pursuing that. They were very aware that the tax opinion by the appropriate lawyers was a more likely than not. A more likely than not is certainly not a 100 percent, so they knew there was very significant risk. Would we have preferred that not be the case? Yes, but this was a strategy that we had done a lot of work on and consulted a lot of people.

Senator LEVIN. By the way, did you tell the lawyers that the tax loss was the primary purpose of the strategy?

Mr. GREENSTEIN. The tax deferral? I think the lawyers——

Senator LEVIN. Did you tell them that?

Mr. GREENSTEIN. Yes. That is my understanding. I would add that——

Senator LEVIN. It is your understanding that you told them that?

Mr. GREENSTEIN. I rarely spoke with the tax lawyers. It is my understanding that they understood all of the details and the objectives for the transaction, and it is also my understanding that they met directly with the clients.

Senator LEVIN. Did you or your firm tell the tax lawyers that the primary purpose of this was a tax loss sale? Did you tell them that, or did anyone in your firm tell them that?

Mr. GREENSTEIN. I don't know. I know there were very extensive conversations between members of our firm with the tax lawyers. I was not involved in those conversations.

Senator LEVIN. If I could just ask one more question in this round, Mr. Chairman. Is this all right? Did you assure Euram, did you give them assurances that the book entry nature of these transactions was known by the counsel with whom you developed the strategy?

Mr. GREENSTEIN. I didn't speak extensively with Euram as it related to this issue. My understanding was that was the case, and in fact, I think in the report, it acknowledges that one of the law firms had all of the documentation describing the various transactions between the offshore entities. So as a result of having all of that documentation and highlighting it in the report, I would assume that was the case.

Senator LEVIN. I want to ask the question again. Did you give Euram assurances that the book entry nature of these transactions was known by the attorneys with whom you developed the strategy?

Mr. GREENSTEIN. Again, my understanding was that was the case.

Senator LEVIN. That you did give those assurances?

Mr. GREENSTEIN. Are you asking if I did personally—

Senator LEVIN. No, your firm.

Mr. GREENSTEIN. That was my understanding, yes.

Senator LEVIN. Thank you.

Chairman COLEMAN. Senator Collins.

Chairman COLLINS. Thank you.

Mr. Greenstein, I want to follow up on the line of questioning from Senator Levin. In your written statement, you are very critical of the Subcommittee's report and you say that the report is, "flat wrong in suggesting that the POINT transaction did not offer an opportunity for a profit." You go on to say, "In fact, POINT gave investors the potential to either earn profits or incur losses based solely on market fluctuations." But, in fact, the whole point, not to make a bad pun here, but the whole purpose of the POINT strategy was to generate capital losses. It wasn't to generate profits. It was to generate losses. So, in fact, what the Subcommittee's report says is correct.

Mr. GREENSTEIN. The opportunity to generate a profit or the opportunity to generate a loss based on the positions held was very distinct. I am not denying that the prime objective was tax deferral. But, in fact, in one of the transactions, in Mr. Saban's transaction, a fee element was tied to the performance of the stock basket. A component of Quellos's fee was linked to how that stock basket did. So while the primary motivator was tax deferral, there was clearly economic risk and reward and that is why the duration on every POINT strategy was different.

Chairman COLLINS. Wasn't this marketed as a tax product, the purpose of which was to allow your clients to avoid paying taxes on gains?

Mr. GREENSTEIN. Yes. It was a tax-advantaged strategy, and my only point, Senator, was that there were economics associated with the tax-advantaged strategy.

Chairman COLLINS. Do you believe that the POINT strategy was a legitimate transaction?

Mr. GREENSTEIN. Absolutely. We consulted, again, some of the top law firms in this country.

Chairman COLLINS. I am not asking, did you believe at the time. I am saying, in view of the fact that Mr. Johnson got audited and had to pay back taxes and interest due, are you still maintaining that this was a legitimate tax strategy?

Mr. GREENSTEIN. It was a legitimate tax strategy—and again, I am not a tax lawyer so I am qualifying that—it was a legitimate tax strategy that was registered with the IRS as a tax shelter, so they had the information. They had the road map. And the IRS determined that it was not a viable strategy—

Chairman COLLINS. Then how can you maintain to this day that it was a legitimate strategy? If it was a legitimate strategy, then poor Mr. Johnson should not have been saddled with back taxes and penalties and interest.

Mr. GREENSTEIN. My understanding was the strategy was legitimate and legal. The IRS disagreed with the conclusions. But I don't believe that means it is not legitimate.

Chairman COLLINS. Well, I can tell you that I would think your clients would think it wasn't legitimate if it resulted in back taxes, interest, and penalties for them.

Mr. GREENSTEIN. Well, I think in that case, Senator, the process worked. The clients had a more likely than not opinion, so they knew going into it this was far from a sure thing. Otherwise, it would have been a much different opinion. It was registered as a tax shelter in Mr. Johnson's case, so the IRS had knowledge and it was registered 6 years ago. The IRS had knowledge of the transaction. We provided the information. They evaluated it. And whether a client settled with the IRS or took it to court, that was really an issue up to them.

Chairman COLLINS. I don't see how you can argue with what was the outcome of the IRS's audit of your client. I am not saying that Mr. Johnson escapes responsibility here. He does have his own advisors. But the fact is that it did not work out well for him and this transaction ultimately was found to not pass the smell test.

Mr. GREENSTEIN. No, and we understood, again, like the clients, that there was no guarantee that it would pass the smell test.

Chairman COLLINS. I guess that brings me full circle to my question. I don't know how you can sit here today and say that you still view the POINT strategy as a legitimate one when it has been rejected by the IRS.

Mr. GREENSTEIN. Again, and I am not a tax expert, so trying to understand the tax legitimacy, I can't comment on that. Was it legitimate to enter into that transaction based on the advice and information we know? Yes. As it turns out, it was not a viable strategy and we respect that and we knew that the IRS interpretation, or again, my understanding was that the IRS interpretation could rule against that and that was appropriate. And I think, again, my understanding is that is how the system is supposed to work.

Chairman COLLINS. Mr. Conn, I give Bank of America credit for acknowledging that the bank's performance was not what it should have been in reviewing the Wyly transactions, and you have outlined in your testimony a number of remedial actions that the bank has taken. That brings me to a fundamental question for you and that is, are you confident that the new measures that you have put in place would have prevented the bank's involvement in the kinds of transactions that are the focus of this investigation? In other words, if you had the procedures, the safeguards, the processes, arguably the culture that you have now, had that been in place prior to your entering into these transactions, would those reforms have prevented your involvement?

Mr. CONN. Thank you, Senator, for acknowledging our remedial actions. To make one point clear, we were not involved in the POINT transaction—

Chairman COLLINS. No, but you were in the Wyly transactions, which were discussed earlier.

Mr. CONN. With regard to the Wyllys—the answer to your question, yes, our remedial actions, I feel confident that we would not—and ultimately come to the same conclusion. We would do that, and that was we needed the beneficial ownership information, and if it is not supplied, we will not entertain opening those accounts. And so I believe that would be a continuation of our policy that we ulti-

mately had. So I believe it would have been quicker and we would not have those accounts if the client would not give us the information, which they ultimately would not, and we would never have opened the accounts.

Chairman COLLINS. Just one final question if I may, Mr. Chairman. Is it sufficient for Congress to rely on banks such as yours to put in place the reforms that are needed, or do we need to pass new legislation or new regulations to make sure that you maintain this kind of commitment going forward or that other institutions that haven't adopted the reforms that you so painfully had to adopt don't make the same kinds of errors?

Mr. CONN. Senator, I believe it would be a partnership. I believe that our institutions, working with the government, should come to a conclusion, do we need better laws? That is how I could answer that question. Ultimately, a partnership between corporate America and the government to make those decisions.

Chairman COLLINS. Thank you, Mr. Chairman.

Chairman COLEMAN. I just want to follow up a little bit more on this issue of the profit. Would it be fair to say, Mr. Greenstein, that the source of the purported economic profit on the transaction was the warrant premiums?

Mr. GREENSTEIN. That was one potential. The main source of the profits was the basket of securities——

Chairman COLEMAN. The gain in the baskets here, that was capped at 8 percent, wasn't it? You have a cap on that, is that correct?

Mr. GREENSTEIN. There was a 90-day collar. That collar, there were several situations where we had discussions to change that collar. So that could have been rolled. It could have been reduced. It could have been extended, and we explored for our clients different options, again based on how the portfolio had moved and what the prevailing——

Chairman COLEMAN. You are picking stocks that you believe are going to fall in value.

Mr. GREENSTEIN. No, the stocks that were originally put in the portfolio, let us say we took an example, Microsoft, and Microsoft hypothetically, let us say, fell from 100 to 25 and then it was put into the partnership that the client bought. Once the client owned it at 25, that price could go up or down and the reason the portfolio was built the way it was was to try to take advantage of some of the opportunities in the market, again remembering back that we had the technology and the telecommunication meltdown, so to try to take advantage of some of those opportunities to earn the money back.

Chairman COLEMAN. You would disagree with an assertion that a very significant source of the purported economic profit on the transaction was to be the warrant premium?

Mr. GREENSTEIN. That was a potential, as was the potential on the stock. So I would not disagree with the question as you asked it, Senator.

Chairman COLEMAN. But the benefit of the warrant premium was that it was one that would accrue to the individual if it was held for a period of time, is that correct?

Mr. GREENSTEIN. To the best of my recollection, it was my understanding that the structure that involved the warrants was to replicate a common investment vehicle in Europe that was known as a BLOC or a HYPO, and essentially, what that was was a portfolio of equity securities with a long-dated call option written against it, or a warrant in this case, and then that was sold potentially to investors. So that would be the opportunity, which would require holding the equity basket for a considerable time——

Chairman COLEMAN. But in this transaction, in each and every case, the warrant was unwound. A certain loss was achieved and the warrant was unwound at that time, so there was no long-term hold. It was simply unwound at a certain point in time when you got the loss you needed.

Mr. GREENSTEIN. Yes, Senator.

Chairman COLEMAN. I think that is part of the problem, I would suspect, from the IRS is perspective. To claim that there is an intent here to generate some profit or benefit from a warrant that ostensibly is going to gain value over a long period of time, but in each and every instance is unwound, I think is obviously one of the problems here.

Mr. GREENSTEIN. Well, I agree that is one opportunity to make profit. The other is just the outright ownership of the equity basket, and that varied considerably investor by investor in terms of when they wanted to get out.

Chairman COLEMAN. But that opportunity, again, it was consistently cut off. At the time you got your loss, you unwound the warrant and you were out, even though the projection in terms of gain was for holding those warrants for an extended period of time, is that correct?

Mr. GREENSTEIN. Yes, they were closed early.

Chairman COLEMAN. And if I can get back, Mr. Conn, and I appreciate the recognition by Senator Collins about the change in policy, in terms of the Wyly-related offshore trusts and corporations, from 2002 to 2005, what were the procedures that were followed? Could you just give me an overview of when the accounts were opened and how did the implementation of the PATRIOT Act modify or change the bank's procedures related to these accounts?

Mr. CONN. Certainly, Senator. Just to give you a history, the accounts were transferred into Bank of America in February 2002. We did not actively or do not actively open these type of accounts up as a type of product that we offer for U.S. citizens. We don't—it is just not something that the Private Bank actively does. So we get the accounts, and at that point in time, we believe we were complying with the PATRIOT Act when it came to knowing your client.

What had happened, because I think at that time there was a question whether we needed specific information about beneficial owner. I am not here to split hairs, but I think there was legal interpretation in February 2002 that you really didn't need that. Now, I am not saying that we ultimately didn't come to the conclusion. Our policy ultimately became, as the law evolved, you need that information.

Chairman COLEMAN. But that is part of the problem here. The Wyls are the beneficial owners and no one is revealing that. You know they are the beneficial owners.

Mr. CONN. We believed that the actual beneficial owners, we were told, were relatives of the Wyls, grandchildren, specific charities. Now, when this was highlighted to us at NFS, and this is one thing that came up through our relationship with them, what they do for us, they are our clearing agent, just to make that clear, that what NFS does is they highlight situations that we need to further investigate. That came up in January that we needed that, I believe, and we went through a process and a dialogue with the representatives of the trust—we were not talking to the Wyls because we believed this was separate—that we wanted this information. And they came back to us saying, well, we understand from your competitors that you do not have to get this information.

Our policy was at that time, and still is, we need that information. So we entertained a dialogue with the representatives, is there a way to get that information without violating their confidentiality requests. We came to the conclusion that, no, there was no way we could do that, and I believe it was in June. We went to NFS and said, put together a series of questions that we have to ask and want to ask the beneficiaries, or the representatives of the trust, and if we do that and they don't answer them, we are prepared to take appropriate action, and that is what we did.

We ultimately asked for the information on beneficial ownership. They refused to give it to us. We closed the accounts and filed the appropriate forms.

Chairman COLEMAN. If I have no objection from my colleagues, I just want to follow up with another question. Mr. Schaufele to tie into this, could you talk a little bit about the concept of beneficial ownership? I take it you are familiar with security laws and the requirement that large shareholders declare their beneficial ownership in a publicly-traded company, is that correct?

Mr. SCHAUFELE. I am not a lawyer, I am a broker, but I know large shareholders do have to, if they are an insider or own more than 5 percent, there is a filing that does need to be made, yes, sir.

Chairman COLEMAN. We see instances where offshore accounts are set up by the Wyls. I think there were, by the way, 65 securities accounts set up by Bank of America, is that correct, Mr. Conn?

Mr. CONN. I don't know the exact number, Senator, at this time of how many security accounts there were.

Chairman COLEMAN. The record indicates that there were 65 opened by your bank. We have offshore accounts opened by the Wyls holding large amounts of stock that were originally deposited by the Wyls. Mr. Conn or Mr. Schaufele, at the time this was happening, were there any concerns that the Wyls were attempting to circumvent disclosure obligations under security laws by using the offshore trusts?

Mr. SCHAUFELE. There was no concern from my standpoint. The firms that I was with knew that the Wyls were beneficial owners of these accounts and I relied on the compliance folks for what they would recommend to do. At one point, this was back, I believe, at Lehman Brothers—and I believe it says this in the report—some of these accounts actually were 13(d) filers.

Chairman COLEMAN. But there was an effort in at least one instance where a number of the offshore accounts actually kind of split shares among themselves to reach a level of holdings underneath 13(d) filers. But you are saying you had no knowledge of that?

Mr. SCHAUFLE. That is correct.

Chairman COLEMAN. Mr. Conn.

Mr. CONN. As I understand it, we were assured by the protectorate, the trustees of the accounts that there was no affiliation. While we believed through our financial advisors that the Wyls endowed the accounts, we felt that through the representation of the individuals that there was not an affiliation there, that it was entirely independent.

Chairman COLEMAN. Senator Levin.

Senator LEVIN. Mr. Greenstein, is it true that it was always your understanding that there would be no cash transfers passed between those two companies?

Mr. GREENSTEIN. No. I did not understand the ultimate mechanics of those. We relied upon Euram, European American, to execute those.

Senator LEVIN. Do you know who John Staddon is?

Mr. GREENSTEIN. Yes.

Senator LEVIN. Take a look, if you would, at Exhibit 54.<sup>1</sup> Who is John Staddon? Is he with Euram?

Mr. GREENSTEIN. Yes.

Senator LEVIN. So you had a lot of dealings with him, did you?

Mr. GREENSTEIN. I had more dealings when he was in the legal department at UBS than I did at Euram.

Senator LEVIN. Then you had dealings with him at Euram?

Mr. GREENSTEIN. Yes.

Senator LEVIN. OK. Now, look on page 2 of that document, near the bottom, the third paragraph from the bottom where it says, "Because the transactions—" Do you see that paragraph?

Mr. GREENSTEIN. The third paragraph?

Senator LEVIN. This says page 2 on here. It is page 5. I have the wrong page number. Near the bottom of page 5. "Because the transactions were conducted—" Do you see that paragraph?

Mr. GREENSTEIN. Yes.

Senator LEVIN. I want to read it to you now and you can follow it. "Because the transactions were conducted in this manner through the enclosed documents, no physical transfer of shares were made, no transactions took place over any exchange, and no cash transfers passed between bank accounts of the two companies. This, however, was always understood to be the case. Euram obtained assurances from Quellos that the book entry nature of these transactions had been known by the counsel with whom they developed the strategy and that it would be disclosed to any client advisor and opinion provider involved in any subsequent implementation." So far, do you agree with that?

Mr. GREENSTEIN. Yes. These are common over-the-counter—

Senator LEVIN. But a minute ago, you said that you did not understand that there would not be cash transactions. Now you say

<sup>1</sup> See Exhibit 54 which appears in the Appendix on page 1138.

you did understand that no cash transfers passed between bank accounts of the two companies.

Mr. GREENSTEIN. I was referring to, and I apologize if I misinterpreted your question, when the transaction was initially initiated, that was the case. Yes. These are descriptions of standard over-the-counter-type agreements.

Senator LEVIN. I know that is your testimony, but is this the accurate description of what was going on with those two shell companies in the Isle of Man? Were you aware of that fact?

Mr. GREENSTEIN. I don't understand the movement of cash. What I do know is that when there were obligations by Barnville or Jackstones to pay cash to the client, to deliver shares to the client upon request, they met those financial obligations in all cases. So in that respect, certainly if there was cash paid to a client, there had to have been cash movement between those entities. What that is, I don't have knowledge of that and wasn't involved in that level of detail.

Senator LEVIN. Now you are saying you did believe there was cash that moved between those two entities, whereas I just read you a statement that came from Euram to us that said that it was well known—let me get the exact words here—“no transactions took place over any exchange and no cash transfers passed between bank accounts of the two companies.” And it says, “This, however, was always understood to be the case.” Did you understand that to be the case?

Mr. GREENSTEIN. Yes. If I could respond to comments that you made in your question. First of all, I am puzzled why Euram, who it is my understanding refused to be interviewed by the staff, submits a written statement that is contradictory to oral and written communication they had given to us many years ago, and that is assumed to be fact.

Senator LEVIN. I am just asking you if it is a fact. I don't assume anything. I am asking you, and you said it—first, you said it is true, and then you said it is not true.

Mr. GREENSTEIN. My understanding, and the way I was trying to answer your question, Senator, is that there were obligations entered into between those two entities.

Senator LEVIN. Did cash transfer between those two entities?

Mr. GREENSTEIN. No. Up front, these are legal contractual obligations, which I believe he referred to. As is the case, say, with a contract for differences or a swap, there is no cash transaction that occurs immediately. I was referring to that. But at the end—

Senator LEVIN. Not immediately—

Mr. GREENSTEIN. At the end, there has got to be some settling between those entities of whether it is delivering stock, whether it is paying obligations. So as it relates to a cash movement on the settling of the contractual obligations, yes, I believe there was—or it was my understanding and my assurance, I received assurance that there was that movement at that portion. So I misinterpreted and I apologize—

Senator LEVIN. Would you present that understanding that you received from Euram to the Subcommittee?

Mr. GREENSTEIN. Would I present that?

Senator LEVIN. Yes, will you give it to us.



Mr. GREENSTEIN. My understanding—

Senator LEVIN. You said you got written assurance from them early. Would you provide that to us after this hearing is over?

Mr. GREENSTEIN. I believe we have, and I was referring to—yes, I believe you have correspondence from Euram from us, and also there was verbal assurances that we received. As an example, in your report, they told us that the owners of Barnville and Jackstones were authorized to enter these transactions, that there was complex ownership, and I think in the e-mail that you had in your report, they said, we are not keen on disclosing who those owners are. So that was what they told us. They didn't say, we don't know who the owners are, like they communicated to you.

Senator LEVIN. Did you know who the owners were?

Mr. GREENSTEIN. No. We relied upon them.

Senator LEVIN. Did Euram know who the owners were?

Mr. GREENSTEIN. They had communicated to us that they knew and they were—as the e-mail said—keen not to disclose it. So it was our understanding, and again, relying on the reputation and past dealings we had with them, that when they said they were keen on not disclosing it, that we could take comfort in that.

Senator LEVIN. So you view Euram as being an honest—you have always dealt with them and felt that they are an honest company?

Mr. GREENSTEIN. At that point in time, that was the case. When I see statements made today that contradict that, that is disappointing to me.

Senator LEVIN. I want to go back to that value of the portfolios that you selected and that you sent to Euram. You insisted that the total value was only about a billion-and-a-half and I want to go through that with you, because I add up to \$9.5 billion.

Mr. GREENSTEIN. OK.

Senator LEVIN. Take a look at Exhibit 51.<sup>1</sup>

Mr. GREENSTEIN. Any particular page?

Senator LEVIN. No. If you look at the value of the stocks that were identified that you passed along to Euram, that is \$397 million on that day. By the way, these documents came from you, from your company. So just round it off. December 28, the portfolio that you sent the names of was \$400 million.

Then take a look at Exhibit 51b, and these documents, these are contracts between the two shell companies in the Isle of Man, this back-and-forth money and cash—excuse me, cash and stocks that didn't exist. This is Exhibit 51b, and the amount of this list that you provided to them is \$1.648 billion. Someone is adding these up for me back there.

Take a look now at Exhibit 51c. This is another portfolio that you created for them, \$1.1 billion.

Now look at Exhibit 51d. This portfolio of stocks that you created and sent them the list, this one was \$3.3 billion.

Exhibit 51e, which is dated June 6, \$3 billion almost even. That totals \$9.6 billion.

Mr. GREENSTEIN. Sure.

Senator LEVIN. Is that true?

<sup>1</sup> See Exhibit 51 a–k which appears in the Appendix on page 1085.

Mr. GREENSTEIN. That is true. What I was responding to earlier was the question as it related to the basis differential, the difference between—

Senator LEVIN. Excuse me, Mr. Greenstein. I was very careful when I asked you about the total value of those stocks, the list of which you sent to Euram. You said it was one-point-something billion dollars. Whether you said that or not, the record will speak for itself. Are you now acknowledging that the lists of stocks that you sent to Euram that would then be sent to one of these two companies to be exchanged with the other company totaled about \$9.6 billion?

Mr. GREENSTEIN. Yes, and I apologize if I misunderstood your question. I thought you had asked about the basis differential, which is my recollection, \$1.4 billion. I know we were talking about those two interchangeably, so those two numbers would be correct.

Senator LEVIN. The basis differential is the amount that you had to sell, right?

Mr. GREENSTEIN. The potential tax deferral amount, yes.

Senator LEVIN. That you were selling to taxpayers looking for tax losses, right?

Mr. GREENSTEIN. Correct, tax deferral.

Senator LEVIN. Were you aware of the fact that those companies had two pounds each paid-in capital?

Mr. GREENSTEIN. Again, as I had stated earlier, paid in capital might be analogous to par value, where you might look at in the United States, the par value of a share is a penny, and that has no relationship whatsoever to what the share price is or the assets. So paid in capital, it is not unusual in an offshore investment company to have a very nominal paid in capital and very significant assets. So I don't think it represents the assets or the liabilities of the company.

Senator LEVIN. Do you have any idea what those assets or liabilities were in those two companies?

Mr. GREENSTEIN. No, and as I had testified earlier, that is where we relied upon Euram and where Euram was paid a significant amount of money to assist in aspects of the transaction which this was clearly one of them.

Senator LEVIN. Thank you. Thank you, Mr. Chairman.

Chairman COLEMAN. Thank you, Senator Levin.

I notice Senator Carper has joined us. Senator Carper.

#### **OPENING STATEMENT OF SENATOR CARPER**

Senator CARPER. Thanks, Mr. Chairman. Not long ago, I was talking with someone back in my own State, a fellow who was not particularly happy with paying taxes. He said to me, I would feel a lot better about paying the taxes that I do if I were convinced that a lot of other people who have a whole lot more money than I do were paying their fair share, as well.

I know Mark Everson was here and testified earlier today in the hearing. He has testified before our Subcommittee, as well, and he testified to us that there was \$300 billion in taxes that were owed last year that were not collected. In some cases, they have a pretty good idea who owed the money, the magnitude of the money that was owed. They just don't have the resources to go out and get it.

Our tax laws are vague enough and people are smart enough to find ways to avoid their responsibilities.

I just want to thank you and particularly Senator Levin for convening this hearing today and for the kind of dogged determination that I know you bring to this pursuit. We face huge budget deficits in this country, \$300, \$400 billion a year, and as we look ahead to my generation retiring, we note that they are not going to get much smaller as long as we are involved in wars in Afghanistan and Iraq and problems like Katrina to deal with and people in my generation becoming eligible eventually for Medicare and Social Security and all. It is important that we find out who owes money and to make sure that they pay their fair share so that the rest of us don't have to pay more than our fair share.

I have some questions I would like to ask for the record. I am not going to ask them here at this time. But I want to thank you both for holding this hearing and for airing these issues, which they certainly need to be aired.

The last thing I would say, it is important for us collectively to provide the resources that the IRS needs, not just dollars and cents personnel to go out and do their job, but also to make sure that we pass legislation here and that it is in a form that somebody who is enforcing our tax laws can understand it and can go out and collect the monies that are actually owed. Thank you.

Chairman COLEMAN. Thank you, Senator Carper. You represent a State, Delaware, in which banking and financial institutions are important to your State economy. Financial institutions depend upon trust and confidence, and when that subdues, I think it has a negative impact on the entire system. So I appreciate your presence and I appreciate your interest and involvement in these issues.

I think Senator Levin, I understand, had one other line of questioning.

Senator LEVIN. I did. You made reference to your fees, Mr. Greenstein. You said that there was in one case, at least, that a part of your fee was tied to any profit that might be earned in that incremental piece of this transaction, is that correct?

Mr. GREENSTEIN. Vaguely, I believe that is the case, yes.

Senator LEVIN. Is it not the case that the greater the losses here, the greater your fees?

Mr. GREENSTEIN. Our fees, the tax deferral was really the starting point for the fee negotiation. So in answer to your question, yes. From that starting point, other things were included, be it estate planning or investment management. But the starting point was correct, yes, the tax deferral.

Senator LEVIN. So the key component to your fee was the size of the loss?

Mr. GREENSTEIN. That was the starting point, yes.

Senator LEVIN. Was it also the key component of your fee as well as the starting point?

Mr. GREENSTEIN. Yes.

Senator LEVIN. And the greater the loss, the greater your fee?

Mr. GREENSTEIN. Correct.

Senator LEVIN. I think that speaks volumes as to what this is all about. You weren't selling investments. You were selling losses, and your fees went up with the loss. It is just as clear as can be.

You can say that there were possibilities here of investment gains, and I guess there were theoretically tiny possibilities, but what you can't say is that the purpose of this was anything other than to create a tax loss by using two shell corporations, which have no capital, \$5 each in capital. You have no idea what assets they have beyond that. That is what Euram told you. Nobody knows who owns them. And then you send to them \$9.6 billion in stocks that you identify that you know will be just swapped back and forth for nonexistent cash, unless you think that those companies had \$9.6 billion in cash, which I don't think you believe. And so what it comes down to is this absolutely strains credulity.

I don't believe anybody looking at this transaction, including lawyers who we are now going to talk to, knowing what they now know, can believe that these transactions represented economic substance. What these transactions represented was a concoction to create tax losses which were then sold to taxpayers to offset capital gains.

Mr. Greenstein, I think that any fair reading of this leads not only inevitably, but immediately to that conclusion.

I have questions for the record for our other three witnesses. I am sorry, I don't know if they are sorry, but I am sorry that I didn't have a chance to ask them some questions. But I want to thank our witnesses for coming forward.

Chairman COLEMAN. Mr. Greenstein, do you want to reply?

Mr. GREENSTEIN. I didn't know if there was a question there. I strongly disagree with a number of the points, but—

Chairman COLEMAN. I want to thank the panel, Mr. Conn in particular, Bank of America and HSBC. We do appreciate the changes that you have made in dealing with this.

My concern, as this panel leaves, is that lawyers, experts, and everyone else told clients they could do this. So much of this flies in the face of common sense and strains credulity, that there were folks with beneficial interests directing assets and transactions, that there weren't concerns that POINT clearly was not a strategy designed to generate profit. As a result, a lot of people, or a number of people with great wealth, ultimately paid the price, but beyond that, I think the entire economic system and all of us who pay taxes are openly hurt by these transactions and that is what is so disturbing here.

With that, I want to thank the panel and we will call our last panel.

Our final panel today, the witnesses for today's hearing are Michael G. Chatzky of Chatzky and Associates; Lewis R. Steinberg, a former partner at Cravath, Swaine and Moore; John P. Barrie of Bryan Cave; and finally, Charles W. Blau of Meadows, Owens, Collier, Reed, Cousins and Blau.

Mr. Chatzky and Mr. Blau, I understand that you or your firms assisted in providing advice on the Wylys' offshore network. I have concerns about whether the offshore structures comported with our laws and look forward to hearing each of your testimony.

Mr. Steinberg and Mr. Barrie, I understand that you advised clients purchasing the Quellos-designed POINT transaction. Lawyers played a central role in this transaction, representing to clients that these strategies were within the letter of the law. I am concerned that our legal profession may be called upon to analyze these transactions possibly without a full understanding of the material facts. I appreciate your attendance at today's hearing and look forward to your testimony and perspective on the role of counsel in facilitating these types of transactions.

Mr. Steinberg, I want to add that I sincerely appreciate your changing your scheduled family vacation to accommodate us at today's hearing.

Before we begin, again, pursuant to Rule 6, all witnesses who testify before this Subcommittee are required to be sworn in. Please stand and raise your right hand. Do you swear the testimony you are about to give before this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. CHATZKY. I do.

Mr. STEINBERG. I do.

Mr. BARRIE. I do.

Mr. BLAU. I do.

Chairman COLEMAN. I would like to ask you to limit your testimony to 5 minutes. When the lights turn from green to amber, you have a minute left to conclude your testimony. Your written statements will be included in the record in their entirety.

Mr. Chatzky, we will have you go first, followed by Mr. Steinberg, then Mr. Barrie, and Mr. Blau, we will have you conclude. Mr. Chatzky, please proceed.

#### **TESTIMONY OF MICHAEL G. CHATZKY, CHATZKY AND ASSOCIATES, SAN DIEGO, CALIFORNIA**

Mr. CHATZKY. Thank you very much, Chairman Coleman. Chairman Coleman, Ranking Member Levin, Members of the Subcommittee, and the Permanent Subcommittee on Investigations staff, I appreciate your inviting me to participate at this morning's hearing, and I would also especially like to commend the professionalism, or the professional way I was treated by the staff. Especially, I would like to commend Laura Stuber, Mark Nelson, and Robert Roach for their very kind method in treating me.

My background is I have been practicing law since 1970. I am a California attorney. My practice is primarily engaged in the field of wealth protection. That includes several different aspects, including taxation, estate planning, business planning, and asset protection.

A wealth protection attorney, such as myself, normally addresses issues which pertain to wealth erosions, in other words, threats against your wealth, and those particular threats generally consist of the following: Probate, estate tax, income tax, and lawsuits. So if you have accumulated wealth, which is very commendable, that is fine, but you need to be concerned about these threats to your wealth because they can lower your net worth. And so as a lawyer, what we normally do is we inform people about these threats and ways and means to address them.

We have freedom of choice in our country in which we can explore alternatives. For example, if someone is starting a new business, they have the choice. They can start the business as a sole proprietorship, as a corporation, or they can start it as a corporation that makes a Subchapter S selection, or they might be able to start it in States that permit it as a limited liability company with a sole member. Each one of those alternatives has different legal consequences. Each one of those alternatives has different tax consequences.

Privacy may exist in the foreign area. This morning, we heard ample testimony and had ample discussion on the privacy concerns that this Subcommittee is very correctly raising. However, one thing that I did not hear this morning that I think is critically important is that privacy in foreign jurisdictions, which have legislation that states that members of the financial services sector are not allowed to freely disclose transactions or it can be a criminal offense, that doesn't pertain to U.S. people and from a different angle, and that different angle is the following.

If you are a U.S. citizen and you establish a foreign trust, then you are required by the Internal Revenue Service and by the Internal Revenue Code to file a form with the Internal Revenue Service. That form is Form 3520. Form 3520 in the last 10 years or thereabouts has been greatly modified. It now includes not just reporting who you are—you are a U.S. citizen, you are forming a foreign trust—but you also have to provide very specific information about the trust.

So even though members of the foreign financial services sector, such as a trust company in another jurisdiction, are not allowed to reveal information about the trust, as a U.S. citizen who forms the trust, you are required to inform the Internal Revenue Service all about the trust, and when I say all about the trust, Form 3520 includes such items as your name and Social Security number. You have to provide a copy of the trust instrument itself. If the trust instrument has been amended, you have to provide a copy with the amendment or any modifications to the trust instrument. If there is a written understanding between you and the trustee, you have to provide that written understanding and attach it to your Form 3520. If there is no written understanding but there is an oral understanding, you have to reduce the oral understanding to writing and attach that to Form 3520.

So the point is that Form 3520 has been changed in recent years with respect to reporting requirements. It has been additionally changed in recent years with respect to penalties. It used to be if you didn't file Form 3520, the penalty was a fine of \$1,000. Well, if you are someone who is quite wealthy, a thousand-dollar fine might not be that horrible. The current penalty, however, is much more serious than that. It begins at an amount of 35 percent of the trust assets that you transferred to the trust, and then if the IRS demands payment of that fine and you refuse to pay the fine, it goes up in increments of \$10,000. So the point is if you transfer a substantial amount of money to a foreign trust, you not only have to reveal it to the Internal Revenue Service in great detail, but you also run the risk of being subject to a very significant fine.

In addition, there have been some other changes in the last 10 years or thereabouts that have certainly beefed up enforcement and, you might say, removed the cloak of privacy in the field of foreign planning. The Internal Revenue Service in the year 2000 proposed new regulations dealing with Internal Revenue Code Sections 679 and 684. Section 679 is a statute that, in essence, says if you are a U.S. citizen who transfers assets to a foreign trust that has or is capable of having at least one U.S. beneficiary during the year, then you, the U.S. transferor, will be taxable on the income generated from the assets you transferred to that trust until your death. Internal Revenue Code Section 684 is a section that has to do with a taxation on the transfer of appreciated assets to a foreign trust.

The Internal Revenue Service came out in the year 2000 with some proposed regulations. The proposed regulations were very detailed. They were very voluminous and they were very tough. I don't think they were very fair, but they are very tough and they are in existence and they are what we have to face today.

Those regulations make it very difficult for any U.S. citizen to effectively use a foreign trust to save taxes. In my career, which spans several decades, from 1970 all the way to today, I found that people who come to our firm and are seeking a foreign trust have done so for a different purpose.

In the 1970s, especially the early 1970s, the primary reason why someone would want a foreign trust was to save income taxes, specifically to defer income tax, because a foreign trust could be effectively designed in that era so that the income from the trust would not be currently taxable. It would only be taxable when it was distributed, and there were very many, very attractive ways and means to distribute funds from a foreign trust effectively without having the funds be considered a taxable distribution.

However, that changed in the 1976 Tax Reform Act. However, the 1976 Tax Reform Act, which is the statute, or which is the Act that enacted Section 679, which taxes U.S. transferors to foreign trusts, that Act did not have any guidance for taxpayers until the year 2000 other than the legislative history and other than textual writings that could be found in law review articles and other legal journals.

In the year 2000, the Internal Revenue Service decided to address that concern and came out with very voluminous, very detailed regulations that were proposed to stop U.S. people from using different approaches to save taxes with foreign trusts. Those regulations were largely finalized in the year 2001 by the Internal Revenue Service.

Just in concluding my talk, I just want to point out some other, very briefly, some other changes that have been made. The Internal Revenue Service has come out recently with Circular 230 changes, which has to do with tax opinions, making it very difficult for a law firm to come out with a tax opinion on any tax subject that is going to be useful to a client to defend against penalties.

The other thing is, foreign gifts are reportable on Form 3520 and all distributions from a foreign trust, regardless of whether they are taxable or not, are reportable to the Internal Revenue Service on Form 3520.

So my point in concluding this opening statement is that in the last decade, the tax law has changed very dramatically, partially because of Congressional changes, but largely because of the Internal Revenue Service's changes in regulations and forms and enforcement. So today, in today's environment, it is unusual for a foreign trust to be designed effectively to save taxes for a U.S. person. Foreign trusts today are largely used more for asset protection purposes or for foreign investment purposes where certain foreign investments are not available to U.S. parties because foreign parties offering investments don't want to run the risk of being regulated by State regulators and Securities and Exchange Commission regulators and so on, so they will issue such investments to foreign entities or U.S.——

Chairman COLEMAN. May I ask you to conclude your oral testimony, Mr. Chatzky?

Mr. CHATZKY. Thank you, Mr. Chairman.

Chairman COLEMAN. Thank you very much. Mr. Barrie.

**TESTIMONY OF JOHN P. BARRIE, BRYAN CAVE LLP,  
WASHINGTON, DC**

Mr. BARRIE. Thank you, Mr. Chairman. I am a partner in Bryan Cave. I have been a partner since 1993. As the Subcommittee is aware, we were introduced to Matt Krane, the long-time tax advisor of Mr. Saban, in May or June of the year 2001. The introduction was by Quellos and that resulted in our engagement by Mr. Saban to provide tax advice and counsel with respect to a very complex set of transactions that involved the POINT transaction.

I am here today to provide testimony to you with respect to the role of U.S. tax lawyers in connection with the evaluation of tax advantaged transactions. These are very complex areas. I will do my best to respond to your questions. Thank you.

Chairman COLEMAN. Thank you, Mr. Barrie.

**TIMONY OF LEWIS R. STEINBERG, FORMER PARTNER,  
CRAVATH, SWAINE AND MOORE LLP, NEW YORK, NEW YORK**

Mr. STEINBERG. Thank you, Mr. Chairman. Mr. Chairman, Senator Levin, my name is Lewis Steinberg. From 1991 until 2004, I was a partner in the tax department of Cravath, Swaine and Moore, having started there as an associate in 1984. I earned my J.D. degree from NYU School of Law in 1984, later earned a LLM in tax from NYU. I am a former Chair of the Tax Section of the New York State Bar Association, and since 1993, I have been the adjunct professor at NYU, teaching a course in advanced corporate tax problems.

As I understand it, I have been asked to appear today to address legal advice I provided 6 or more years ago to several clients, Quadra Capital Management, now called Quellos Group, and certain individual taxpayers. As I am sure you understand, an attorney owes to his clients, including his former clients, a duty of confidentiality. I will endeavor to answer all questions today as completely as possible, consistent with that duty. At times, I may be unable to answer particular questions because they call for information protected by the attorney-client privilege or otherwise involve client confidences.



I have retained counsel to assist me in addressing any issues of privilege that may arise and I ask for your indulgence if I need from time to time to consult with my counsel. Doing so will enable me to provide as much information as possible to the Subcommittee without breaching my duty to my former clients.

My practice at Cravath primarily involved legal questions in the area of corporate taxation, particularly mergers and acquisitions and certain other commercial transactions. In 1999, I was asked by my client Quadra Capital Management to provide legal advice regarding a transaction structure that came to be known as POINT. I was asked to analyze the proposed structure to assess any tax consequences under the Internal Revenue Code.

From the beginning, I understood that if I were to determine that the proposed structure met standards set forth in the code, I would be asked to prepare written legal opinions to a small number of individual investors regarding those tax consequences. This is what occurred, and I provided legal opinions to five individual investors in four transactions over the next several months. I understand that those opinions have been provided to the Subcommittee.

I should also note that there has been much mention this morning of large fees paid to professional advisors in this transaction. In the case of the Johnson transaction, the fees received by Cravath were \$25,000. The same fee was received with respect to the other four taxpayers in the other three transactions, \$125,000 in total.

All of this happened at least 6 years ago. I recently reviewed those legal opinions in anticipation of appearing today and I can assure the Subcommittee that I believe they represent sound legal analysis based upon reasonable reliance on information provided by the clients. At all times, I viewed my role as providing and did provide straightforward legal advice about the tax consequences of the proposed structure using my many years of legal experience and expertise, and I would be happy to answer any of your questions.

Chairman COLEMAN. Thank you, Mr. Steinberg.

**TIMONY OF CHARLES W. BLAU,<sup>1</sup> MEADOWS, OWENS, COLLIER, REED, COUSINS AND BLAU, DALLAS, TEXAS**

Mr. BLAU. Chairman Coleman, Ranking Member Levin, and Members of the Subcommittee, my name is Charles Blau. I am a partner in the Dallas law firm of Meadows, Owens, Collier, Reed, Cousins and Blau. By agreement with the Subcommittee, I am appearing here today as the designated representative of our firm.

I would like to spend just a moment to talk to you about what we do at Meadows, Owens, and what we are. We are a 31-member law firm with a practice concentration in taxation. The firm was established in 1983 and historically provided clients with legal services in essentially three areas, and those areas would be tax litigation, tax planning, and estate planning. The firm's tax practice has expanded and we also now do tax litigation centering on representation of clients who have controversies both civilly and criminally with the Internal Revenue Service. The tax planning practice generally involves advising clients about the tax implica-

<sup>1</sup>The prepared statement of Mr. Blau appears in the Appendix on page 158.

tions of financial and business transactions. The estate practice is obviously concentrated in assisting clients in planning their estates.

Over the course of the 23-year existence, we have expanded beyond this original scope to include real estate, corporate securities, white collar legal defense, and commercial litigation. Meadows, Owens does not, has not structured, promoted, or provided opinions to promoters in connection with listed transactions as identified by the Internal Revenue Service. We do, however, have a large litigation practice in controversies with the Internal Revenue Service both civilly and criminally, and some of our clients are tax shelter clients.

Most of the attorneys of the firm who have practiced in this area have advanced degrees in taxation. Approximately 12 of our attorneys have LL.M.s in tax. Seven attorneys are certified under the Texas Board of Legal Specialization as certified in tax, and eight attorneys are non-practicing Certified Public Accountants.

As previously communicated to the Members of the Subcommittee, Meadows, Owens' former clients, the Wyllys, through its counsel—or through their counsel, I should say, have instructed the firm to maintain and protect the attorney-client work product privileges. Accordingly, as dictated by the law and the applicable rules of professional conduct in the State of Texas, we must at all times endeavor to uphold and respect our former clients' instructions. While we strictly are going to honor these instructions, obviously, we have diligently attempted to assist the Subcommittee with this inquiry to the extent that we are ethically permitted to do so.

Additionally, we would ask this Subcommittee to take notice of the fact that the attorney who oversaw and directed the majority of Meadows, Owens' legal work with our former clients passed away on July 25, 2003. His passing creates obvious difficulties for us in researching the background and details of these specific transactions and inquiries made by the staff.

These obstacles notwithstanding, I can tell you that Meadows, Owens was engaged from time to time by the clients in a variety of legal matters within the area in which we practice. The first of these engagements occurred on or about mid-1997. At this time, we no longer represent the clients. Our representation terminated when it became apparent to us that a conflict might exist because of the possibility of members of the firm might be witnesses in this matter. When we learned of this potential conflict, we informed the clients of our need to withdraw from further representation.

I would say from my standpoint in trying to review all of these matters that we were involved with that during the period of our representation, I believe that the legal services performed were appropriate and in compliance with the applicable governing laws, principles guiding such matters at the time.

And again, I hope to be able to answer your questions, but I may have some difficulties under the current circumstances of getting into any of the details of the legal advice that we provided these clients because of the privilege issue.

Chairman COLEMAN. Thank you, Mr. Blau, and we appreciate you being here today and certainly understand.

For all counsel, we appreciate and respect the attorney-client privilege, but there are some things that this Subcommittee would like to know and hopefully you can be helpful.

Mr. Barrie and Mr. Steinberg, Mr. Greenstein from Quellos indicated that the POINT transaction was one that had tax deferral—I want to make sure I don't incorrectly paraphrase him—and from his perspective, there was a potential for profit. What did you understand the purpose of POINT to be?

Mr. BARRIE. Let me speak first. My understanding of POINT was it was a tax deferral strategy. The securities that were put into the strategy, the basket of securities had a built-in loss. My understanding is there was an investment aspect of the securities in terms of picking securities that had the potential to make a gain in a very short period of time. But it was primarily a tax advantaged strategy.

Chairman COLEMAN. Mr. Steinberg.

Mr. STEINBERG. I would generally agree with that. My understanding is that these were high-basis assets and so there was a pre-tax economic potential as well as a desire to preserve the high basis in the securities that were in the partnerships.

Chairman COLEMAN. When you talk about the pre-tax economic potential, does that create concerns from an IRS perspective? Doesn't there have to be some real potential of economic gain here?

Mr. STEINBERG. Yes, and my understanding is that there were two potential sources of gain. One would be the return on the warrant premium, and the second would be the fact that the stocks—they were tech stocks. It was pretty volatile, and that there was, particularly in 2000, a realistic possibility they were going to go up.

Chairman COLEMAN. Was it your understanding that the warrant premiums would be unwound as soon as the loss was recognized?

Mr. STEINBERG. I think the opinion says that likely would occur. I think we said that in the opinion. So I think that we were fully aware and did reflect that, that the warrant might be unwound. When that event occurred, obviously, might be very relevant to the profit analysis.

Chairman COLEMAN. It would be more than relevant. In fact, it makes the profit analysis a pretext.

Mr. STEINBERG. If, in fact, the profit analysis, you would want to do over the period of the anticipated holding period of the underlying stock.

Chairman COLEMAN. Mr. Barrie, were you aware that the warrants would be unwound as soon as the loss was recognized?

Mr. BARRIE. Yes, we were, and we actually focused more on the basket of stocks in terms of whether or not there was a profit potential. In the Subcommittee's documents, there is at least one e-mail from Quellos to us describing the potential profitability with a collar at 100 percent and 108 percent and it had set forth various fees, which at the time we believed were the fees that were related to the transaction and included Quellos fees. Based upon that collar, it appeared to us that there was a potential to make a profit with the collar and with the unwind of the position.

Chairman COLEMAN. Were you told that no shares were involved, that this was simply a book entry transaction?

Mr. BARRIE. No, sir.

Chairman COLEMAN. Mr. Steinberg.

Mr. STEINBERG. Because of attorney-client privilege, I can't directly answer that question, but what I would say is the opinion set forth my understanding of the facts and that referred to a transfer of shares.

Chairman COLEMAN. Let me then rephrase the question without this particular case. If you had such a transaction where, in fact, there were no shares involved, if this was simply book entry, a flow-through, would that have caused you to have some concerns about the nature of this transaction?

Mr. STEINBERG. Chairman Coleman, I don't want to quibble. If it were real shares but they were just transferred by book entry, that might or might not. That is a fairly standard process. If what you are asking me hypothetically is that there were no shares, obviously, that would give me some concern.

Chairman COLEMAN. Mr. Barrie.

Mr. BARRIE. That would give me great concern.

Chairman COLEMAN. Let me ask you about the importance of understanding who owned Barnville and Jackstones. Would it be important for you in a transaction like this, where you are looking at \$9.6 billion of reported transactions, to know who the folks were behind the entities involved in these transactions? Mr. Steinberg, and then Mr. Barrie?

Mr. STEINBERG. Mr. Chairman, not necessarily. The reason is that the tax analysis really would not have turned on who the current owner of the shares were. So I am not sure that would have been particularly relevant to my—

Chairman COLEMAN. And maybe I am misphrasing it. The concern we have—if we can get Exhibit 6,<sup>1</sup> please—is what we label as phantom trades, the transactions between Jackstones and Barnville. There is no cash, nothing. There is no economic substance there. That structure, were you aware that this was the structure involved in POINT?

Mr. STEINBERG. Can I just ask my counsel about attorney-client privilege on that one issue?

Chairman COLEMAN. I am not asking you about advice, just whether you were aware that this was involved.

Mr. STEINBERG. To the best of my recollection, the answer is no.

Chairman COLEMAN. Mr. Barrie.

Mr. BARRIE. Not to my knowledge, either.

Chairman COLEMAN. Mr. Chatzky, I appreciate the dissertation on changes in tax policy. But one of the principal concerns here is control. In spite of all the changes in tax law, if I understand, that these trusts are non-grantor trusts. So, in other words, is it fair to say that they have some tax advantages for the individual who set up the trusts? Is that a fair statement?

Mr. CHATZKY. It depends on the facts. For example, if a foreigner sets up a foreign trust and retains a grantor trust power over the trust and it is recognized—

Chairman COLEMAN. If a U.S. citizen sets up a grantor trust—

Mr. CHATZKY. Right.

<sup>1</sup> See Exhibit 6 which appears in the Appendix on page 722.

Chairman COLEMAN [continuing]. Would they have greater tax liabilities than if they had set-up a non-grantor trust?

Mr. CHATZKY. Well, to answer your question specifically, if a U.S. person sets up a trust and the trust is a grantor trust, then the U.S. person setting up the trust remains taxable on the assets transferred to the trust.

Chairman COLEMAN. Mr. Blau, do you agree with that interpretation?

Mr. BLAU. I am not a trust expert in this area, but I would generally say these things are factually driven and it depends on the time that they take place. There are different tax regimes for different years and the rules change.

Chairman COLEMAN. I think it is fair to state that if the grantor retains control of the trust, then, in fact, the trust would be determined to be a grantor trust even in 2000.

Mr. CHATZKY. May I be a little bit more specific, because the law is more complicated than that. If you have a domestic trust, a trust that is administered in the United States and a U.S. citizen funds that trust and retains a grantor trust power over that trust, the U.S. person is taxable on the income of the trust. If it is a foreign trust funded by a U.S. person, even if the U.S. person surrenders all control over the foreign trust, the U.S. person nevertheless remains fully taxable on the assets transferred to the trust until the U.S. person dies. That is because that is what Section 679 says, which may be of questionable constitutionality, but it is in the Internal Revenue Code and it is enforced.

Chairman COLEMAN. I know the laws have changed several times, but if a grantor directs a trust protector to tell the trustee when to sell stock, when to buy stock, when to sell options, when to buy options, what furniture, what jewelry, and what real estate to buy, and in each and every instance the trust protector relays the information to the trustee who complies, does that raise any concerns with you about whether that individual grantor is exercising some control over that trust? Does that raise—

Mr. CHATZKY. Are you asking me?

Chairman COLEMAN. Yes, Mr. Chatzky.

Mr. CHATZKY. Yes. I mean, and again, I don't want to relate this to the Wylys—

Chairman COLEMAN. I am not relating it. I am just asking that hypothetical. Does that raise a concern with you?

Mr. CHATZKY. As a general principle, I would say, yes, it raises a concern because it raises an issue. And as Mr. Blau correctly pointed out on another point recently, it is very factual-driven. For example, if a U.S. person makes a suggestion as to how the trust assets should be invested and the trustee has the power to accept or reject that suggestion, that is legally permissible.

It has been approved by the tax court in a case called Goodwyn. Goodwyn actually is a case where Mr. Goodwyn formed a trust, relinquished all legal control over the trust, had independent trustees, but the trust existed for many years, probably a quarter of a century, and the trustees testified that they always followed Mr. Goodwyn's advice, without any exception.

If Mr. Goodwyn said, don't do it, they didn't do it. If Mr. Goodwyn said, do it, they did. And the tax court said that doesn't

matter, because at any point in time, the trustees had the legal power to reject the advice. It was merely influential advice. It wasn't compelling.

Chairman COLEMAN. These are certainly, again, factual issues, and I am respecting the attorney-client privilege by not raising the specifics in this case.

But I will say, Mr. Chatzky, that if, in fact, that is the case, and you have a case where an individual each and every time directs a trust protector regarding what to do, gives complex discussions to the protector about what type of securities transactions are to be involved, and the protectors can fire the trustees if they say no, and there is a threat that will happen, then a loophole is still there, and we had better change it. It flies in the face of common sense to suggest there isn't control. And if that loophole is there, then we have a problem.

There is an ongoing investigation in the case of the Wyllys, but as I sit here from this vantage point and look at this record, it is very hard for me to understand how it is not very clear that control is being exercised.

Mr. CHATZKY. Well, let me just make this additional point. That is that irrespective of tax objectives or tax purposes, it is very common for a trustee to communicate with a beneficiary about proposed investments and it is equally very common for a beneficiary of a trust to communicate with the trustee about what the beneficiary would like to do. The trustee, though, has the power to reject the recommendations. So, I mean, again, it is very factual.

If you have a situation where the whole thing is a sham, if the trustee is nothing more than a conduit or an agent and isn't exercising independent responsibilities, that is something as a lawyer I would be very concerned about.

However, I am also very concerned about the opposite side of the coin, which is the trustee of a trust established for the benefit of beneficiaries has legally enforceable fiduciary duties to those beneficiaries.

So if, for example, I am the beneficiary of a trust and I go to the trustee and I say, I want you to invest the trust corpus in Microsoft stock and that investment, let us assume, is not to the interest of the other beneficiaries of the trust, the trustee who is making that decision has responsibility to the other beneficiaries and might be sued for breach of fiduciary duty if that type of investment were improper. Probably wouldn't be, but—

Chairman COLEMAN. Absolutely, but there are hundreds of examples in the record where on each and every occasion the instructions given by the grantor or given by the beneficiary, and this is the Wyllys, were followed by the trustees. Some of these instructions were very clear and very explicit, and the record shows that, in fact, when there was some resistance by the trustees, additional pressure was put on them, I think you have a problem.

I will turn to my Ranking Member and come back to the questioning. Senator Levin.

Senator LEVIN. I sure agree with the Chairman. I don't know how you can possibly say where you have hundreds of directions from the grantor that are just funneled right through and carried out by trustees on the Isle of Man, who I think you know and I

know are basically there to carry out instructions of others and not to act independently, I don't know how you can say there is much doubt about who should be taxed on the income of this trust or who is directing the trust. I don't quite get it.

Mr. CHATZKY. Let me say this. In the 1970s, the Internal Revenue Service said almost in the exact same language that you just stated that same argument in two cases. They are both Goodwyn's cases. One was an income tax case, and one was an estate tax case.

Senator LEVIN. Both in tax havens?

Mr. CHATZKY. No, they were both domestic trusts. They were trusts where Mr. Goodwyn—

Senator LEVIN. So they knew—they were able to get their hands on the trustees. They could find out what actions the trustees took and why, right?

Mr. CHATZKY. Well, what I am saying is the trustees stipulated, I mean, they admitted in the tax court and the testimony that during the entire term of their being the trustees—during the entire term of their administering the trust that they always took the recommendations of the grantor, Mr. Goodwyn, the late Mr. Goodwyn, and they always followed them. And if Mr. Goodwyn says, don't do something, they wouldn't do it. If Mr. Goodwyn said, do it, they did it. There are no exceptions.

Senator LEVIN. Did they argue that they were independent?

Mr. CHATZKY. Yes. They said that we are independent, and the IRS took your argument. And it would have said, how can you be independent when you are always, invariably, following the advice of Mr. Goodwyn?

Senator LEVIN. And I added the tax haven there, where you can't get your hands on the trustees.

Shouldn't there be a presumption in a tax haven where your trustees are always carrying out the instructions of the grantor, shouldn't there at least be a presumption that in tax havens, secrecy jurisdictions that the grantor should be responsible for paying the taxes? Doesn't something change because of all the secrecy here?

Mr. CHATZKY. Well, two points to answer the question. One is the tax court in Goodwyn specifically said that the IRS's argument was rejected and they went along with the taxpayer's argument. They said that the point is not that Mr. Goodwyn in fact made recommendations to the trustees which were always followed. The point is that the trustees had the legal power to reject the recommendations. In fact, I am a lawyer—

Senator LEVIN. And is it not true that they argued they were independent?

Mr. CHATZKY. Yes. They argued they were independent.

Senator LEVIN. Can you even find out what the argument is of the trustees here on the Isle of Man?

Mr. CHATZKY. Well, my point is that in your hypothetical where you have a U.S. person setting up a foreign trust in a jurisdiction like the Isle of Man, which has confidentiality and secrecy provisions—

Senator LEVIN. Right.

Mr. CHATZKY [continuing]. That it doesn't matter, that it doesn't matter because the law presently says—Form 3520 says if you are

a U.S. person and you set up a foreign trust in a place like the Isle of Man, you are responsible for the tax consequences of that foreign trust as long as that foreign trust has or is capable of having at least one U.S. beneficiary. So if I set up a trust for the benefit of you and you are a U.S. person, I have to report it.

Senator LEVIN. But is it not true that in those cases, the trustee argued that they were independent regardless of the fact that they followed the recommendations of the grantor?

Mr. CHATZKY. That is absolutely true.

Senator LEVIN. That is not true here. It is a big distinction. These are secrecy jurisdictions. They are not arguing anything.

The other distinction is this. With domestic trusts, the trusts pay taxes, don't they?

Mr. CHATZKY. It is complicated because of the way you folks write the law—

Senator LEVIN. Somebody pays taxes, don't they?

Mr. CHATZKY. Not necessarily. If you have a domestic—

Senator LEVIN. Someone should pay taxes on income, shouldn't they?

Mr. CHATZKY. Generally speaking—

Senator LEVIN. Generally speaking. But in tax havens, no one pays taxes. That is the whole point, isn't it?

Mr. CHATZKY. No. If you are a U.S. person and you—in a tax haven, and I will define a tax haven just for the purpose of discussion as a jurisdiction that does not impose taxes on the trust or any part of the trust—

Senator LEVIN. Or on anybody.

Mr. CHATZKY. On anybody. But I am saying that is the tax haven jurisdictions on tax law.

Senator LEVIN. Right.

Mr. CHATZKY. But if you are a U.S. person and you are funding that foreign trust, then under U.S. tax law, even though the trust is administered offshore, you are taxable until your death.

Senator LEVIN. OK.

Mr. CHATZKY. That is Section 679 of the Internal Revenue Code.

Senator LEVIN. OK. Let me now go back to the other witnesses here.

First of all, Mr. Barrie, let me start with you. You indicated that you would be very concerned, I believe was your word, if there were no shares involved in those transfers between those two corporations on the Isle of Man, is that correct?

Mr. BARRIE. That is correct.

Senator LEVIN. Did you understand, or were you informed by Quellos that as a matter of fact, there would be no transfer of real shares?

Mr. BARRIE. We were not so informed.

Senator LEVIN. Did you hear the testimony here today?

Mr. BARRIE. I did.

Senator LEVIN. Well, I think the testimony was that they did inform you—

Mr. BARRIE. My recollection is that I was never informed of the lack of shares. We always understood that there were shares, there was a real purchase. We had some issues as to how to verify that from Mr. Saban's perspective.



And, by the way, I am very pleased Mr. Saban, as a lawyer, has allowed me to come here today to talk about this——

Senator LEVIN. And we are, too, by the way.

Mr. BARRIE [continuing]. That we spent time with trying to find out, did they own the shares? We saw some of the documents, and if we saw all the documents, the documents on their face appeared to be ones where they actually owned the shares.

We ended up going to seek representations that they actually purchased the shares. There was, I believe, an accountant's report to verify that the shares were owned, which was something that was of great concern to us as Mr. Saban's counsel.

Senator LEVIN. Did you have any idea to the scope of the alleged cash that transferred here, \$9 billion between——

Mr. BARRIE. No, sir.

Senator LEVIN. Would that raise a concern for you if you knew about it?

Mr. BARRIE. I was told that the portfolio of the Barnville fund was very large and that they had culled out a basket of tech stocks that had high basis, low value. My concern from Mr. Saban's perspective was whether or not those shares were, in fact, real and whether or not he acquired them with a high tax basis.

Senator LEVIN. OK. And why was it relevant to you that there would be real stock? It was important to you, but why was it important?

Mr. BARRIE. The transaction is a tax-advantaged transaction. It allows for the purchase of a partnership interest that has embedded in it stock with high basis, low value. If the stock wasn't real, Mr. Saban couldn't sell anything. If the basis wasn't there, there would be no losses. He would have spent a lot of money for nothing.

Senator LEVIN. So that if the stock wasn't real, you would have recommended against his participating in this transaction?

Mr. BARRIE. If it turned out that the stock wasn't real but there were book entries, if there was something that justified it, we would have to research that and make a decision as to whether or not we felt a comfort level for that, given the size of this portfolio.

Senator LEVIN. All right. But if you knew that the stock was not real, you would have recommended against it?

Mr. BARRIE. Yes, sir.

Senator LEVIN. And the letter which we received here from Euram which says the following—it is Exhibit 54 if you want to follow that.<sup>1</sup> This is on page 5. I read this before, near the bottom, about the third paragraph from the bottom.

Mr. BARRIE. Yes, a letter dated July 6, 2006, from the Subcommittee to Mr. Saban?

Senator LEVIN. No, this is Exhibit 54, page 5.

Mr. BARRIE. Yes.

Senator LEVIN. And then where it says, "Because the transactions were conducted in this manner——" Do you see that paragraph near the bottom?

Mr. BARRIE. Yes, I do.

<sup>1</sup> See Exhibit 54 which appears in the Appendix on page 1138.

Senator LEVIN. And the second sentence. "No transactions took place over any exchange and no cash transfers passed between bank accounts of the two companies. This, however, was always understood to be the case. Euram obtained assurances from Quellos that the book entry nature of these transactions had been known by the counsel with whom they developed the strategy and that it would be disclosed to any client advisor and opinion provider involved in any subsequent implementation." Was it?

Mr. BARRIE. Not to my recollection.

Chairman COLEMAN. With you, Mr. Steinberg?

Mr. STEINBERG. Not to my recollection, either.

Senator LEVIN. Mr. Steinberg, you have written an opinion, which is Exhibit 62d. Before I ask you that, would it have been important to you to have known that there was no actual transfer of real stock here, Mr. Steinberg? Had you known that at the time, would you have recommended the purchase of this?

Mr. STEINBERG. Senator Levin, let me answer the question in two pieces, if I may. From the point of view, as I said earlier, if in giving this opinion, if someone had said to me, we will tell you as a matter of fact there is no stock, that would have been very troubling to me and could very well have meant that I could not give that opinion.

Senator LEVIN. And there was no cash transferring.

Mr. STEINBERG. I mean, again, without going through details, the entire transaction. The other thing, though, which may be a distinction between my role and Mr. Barrie's role, is because I had looked at the transaction for Quadra, now Quellos, I felt that my role should be limited to passing on the transaction and that other regular advisors—tax advisors, etc.—for the individual clients should be involved in looking at suitability issues, looking at making sure the opinion they felt was correct and complete, that the facts were accurate.

So there may be a slight difference in the role here between myself and Mr. Barrie, given my prior representation of Quadra.

Senator LEVIN. OK. So you had previously represented Quadra before Quellos took over?

Mr. STEINBERG. Yes.

Senator LEVIN. And then you were representing Mr. Johnson?

Mr. STEINBERG. Correct.

Senator LEVIN. So to avoid a conflict, is that what you are talking about—

Mr. STEINBERG. Correct.

Senator LEVIN [continuing]. You make that distinction that you just made?

Mr. STEINBERG. Correct.

Senator LEVIN. Now go to Exhibit 62d,<sup>1</sup> page 7, if you would. This is your opinion here.

Mr. STEINBERG. Yes.

Senator LEVIN. Where you say: "A remote possibility of pre-tax profit or the possibility of pre-tax profit that is unreasonably small when compared to the tax benefits attributable to the transaction is insufficient to satisfy this test." Do you stand by that?

<sup>1</sup> See Exhibit 62d which appears in the Appendix on page 1202.

Mr. STEINBERG. Yes.

Senator LEVIN. Do you know what the pre-tax profit possibility was in this transaction for your client?

Mr. STEINBERG. We would have looked at that, yes.

Senator LEVIN. What was it?

Mr. STEINBERG. To be frank, I don't remember, Senator.

Senator LEVIN. Do you know what the profit was, or the loss, the cost? Do you know what the cost was to your client?

Mr. STEINBERG. The actual profit earned on the transaction?

Senator LEVIN. Yes.

Mr. STEINBERG. No. To the best of my recollection, no, I don't know that.

Senator LEVIN. Do you know now after paying his fees whether he made any profit, other than this huge tax loss?

Mr. STEINBERG. My understanding during interview with the Senate staff is that I believe they said Mr. Johnson made a loss. I don't know if that is the case.

Senator LEVIN. Do you know, Mr. Barrie, whether your client had any profit at all, other than that huge tax loss that he bought?

Mr. BARRIE. My understanding at the time was that he made a small profit at the time he disposed of his shares in November 2001. I understand that what the Subcommittee report indicates and what Mr. Saban has said is that there was a loss on the transaction.

Senator LEVIN. Whether there was a loss or a small profit on that transaction, it was, would you not say, tiny compared to the tax loss which he was acquiring?

Mr. BARRIE. It was a small loss, yes. The comparison of—

Senator LEVIN. So it would have been a few million compared to a billion-and-a-half?

Mr. BARRIE. Absolutely, yes.

Senator LEVIN. OK. So now if Mr. Steinberg's opinion is correct, that a remote possibility of a pre-tax profit, or the possibility of a pre-tax profit that is unreasonably small, or I will add nonexistent, when compared with the tax benefits attributable to the transaction is insufficient to satisfy that test, do you agree with that?

Mr. BARRIE. Based upon the projections that we were given, that with a 108 percent collar there was the possibility of making a moderate profit from a percentage standpoint, certainly from a dollar standpoint—

Senator LEVIN. What would that be, a moderate profit?

Mr. BARRIE. The figures that I have seen—I recall seeing is a 9 percent profit at 108 percent. That is in the exhibit, I think July 2001.

Senator LEVIN. OK. Would that pass the test, even if you could make up to 9 percent, compared to 100 percent tax loss? Would you say that that is not small, relatively, compared to the tax benefits attributed to the transaction?

Mr. BARRIE. The tax benefits were significantly larger. What concerned me—

Senator LEVIN. At a minimum, I think your numbers are wrong. It is ten times larger.

Mr. BARRIE. They were—

Senator LEVIN. Eleven times larger.

Mr. BARRIE. I agree with you.

Senator LEVIN. Is there going to be an additional round here?

Chairman COLEMAN. Senator Levin, why don't you continue. I am not going to do an additional round. I am going to say a couple of words before you close.

Senator LEVIN. OK, thank you.

Let me just make sure that both of you agree with what I am saying, or if you do not, then you have an opportunity to say you disagree.

If you knew then that there was no real stock, there was no cash that went between those two Isle of Man corporations, and if you knew that the profit that was maximum to your client would have been 9 percent, and I think that is high in your case, Mr. Barrie, or in your case, Mr. Steinberg, a few million dollars compared to a \$150 billion tax loss, would you have recommended that your clients acquire this tax shelter? Mr. Barrie.

Mr. BARRIE. As to your first question, if the transaction involving the shares was a sham, as is indicated in the report, we would have advised against doing the transaction.

Senator LEVIN. A sham being no real stock, and no cash——

Mr. BARRIE. No real stock, no cash, not being a real transaction, we would have advised not to go into the transaction.

Senator LEVIN. And if you, in fact, had the potential maximum profit of 9 percent of tax loss, is that, in your judgment, sufficient to address the IRS concerns about whether you are buying a tax loss or whether there is a real economic transaction? Is 9 percent sufficient in your book?

Mr. BARRIE. It is done on a——

Senator LEVIN. That is maximum. It is maximum profit.

Mr. BARRIE. Well, that number was based upon a hypothetical put to us prior to the transaction. I hate to pick a number, but what I can say is that we would analyze that in terms of the potential for profit versus the amount. I think on this transaction, as the code existed, you could have a very minute business purpose and still satisfy the requirements of the code. The law was changed to prevent what I will call the trafficking in losses in the partnership context.

Senator LEVIN. Mr. Steinberg.

Mr. STEINBERG. Yes, Senator Levin. Let me take that again in two pieces, and let me also just say again, I think the issue for me would not be recommending to the client, since that was not my role.

Senator LEVIN. Would you recommend to a client under these circumstances.

Mr. STEINBERG. Well, let us take it in two pieces. If, in fact, we assume that there were no shares, I would find it impossible to recommend a client to do that transaction. If what you are saying to me is, assume for a second that taking into account transaction costs you were guaranteed a loss, I don't think that satisfies the law.

Senator LEVIN. How about guaranteed a profit which at the most would be 5 percent of the tax loss?

Mr. STEINBERG. That, I don't know. I mean, I would have to think about that in the context of the overall transaction.

Senator LEVIN. If it is all right, Mr. Chairman, just a couple of questions to Mr. Blau about offshore corporations. Who was the client of your law firm? Was it the Wyllys or was it the offshore entities?

Mr. BLAU. It depended on the representation matter that we were asked to deal with. Some cases, it was Sam Wyly. Some cases, it was Charles Wyly. Some cases, it was other members of their family.

Senator LEVIN. Did you ever bill the offshore corporations?

Mr. BLAU. Yes, we did.

Senator LEVIN. You did bill them? Would you say that a significant percentage of your billing relative to those transactions would have gone to the offshore corporations?

Mr. BLAU. If the transaction dealt with, let us just say an offshore-related manner, generally, we were instructed to bill it toward that entity, the offshore entity.

Senator LEVIN. Would that have happened frequently?

Mr. BLAU. I can't sit here today and give you whether it was frequent or infrequent, but just on a general review of our bills over the period of representation, we did bill the foreign entity probably more than we billed the individual client. But within that, you have to understand that there are a lot of different representation matters.

Senator LEVIN. My staff is reminding me that it wasn't the actual corporation, it was the Irish Trust that I——

Mr. BLAU. That is correct, and I stand corrected, as well. I understood your question.

Senator LEVIN. All right. Mr. Chatzky, why were the option swaps originally structured to be with the Nevada corporations if they were immediately going to assign the options and annuity contracts on to corporations of the same name in the Isle of Man?

Mr. CHATZKY. Well, I would assume that any answer I would give to that question would violate the attorney-client privilege.

Senator LEVIN. Why?

Mr. CHATZKY. Because it would be concerned with legal advice which was given.

Senator LEVIN. This was legal advice that you gave them that they were following?

Mr. CHATZKY. Well, I mean, I can't really discuss the situation——

Senator LEVIN. I am not asking you to tell us the legal advice. I am saying, why would somebody——

Mr. CHATZKY. Why would someone use a Nevada corporation——

Senator LEVIN. Yes.

Mr. CHATZKY [continuing]. Instead of a foreign——

Senator LEVIN. As a pass-through to an Isle of Man corporation, same exact same annuities——

Mr. CHATZKY. The reason it existed at the time was actually a non-reason or a non-issue, but what it was is there was a technical concern that Internal Revenue Code Section 4371, which imposes an excise tax on annuities issued by a foreign insurance company on the life of a U.S. person, might apply if a foreign entity that is not an insurance company issues the annuity.

Ultimately, it was discovered through additional research that wasn't the case. It had to be an insurance company for that excise tax to apply. But because of that concern, out of an abundance of caution, one might use a domestic entity to avoid that particular excise tax.

Senator LEVIN. Thank you.

Mr. CHATZKY. You are welcome.

Chairman COLEMAN. Thank you, Senator Levin. I want to again compliment your staff, Senator Levin, and my own staff for the tremendous amount of work that has been done.

I do want to say, and I want to make it clear, I am a former prosecutor, and the Wyls aren't here and they have exercised their Fifth Amendment privilege and I take that seriously.

I think it is important to state that we are not here to judge guilt or innocence. We have no exculpatory information that has been presented. Attorney-client privilege prevents us from getting that. So I want to make it clear, we only have part of the record here and I understand that. Others will make judgments about criminal liability.

But I do want to say this, the concern I have in looking at the Wyly case is that more than \$140 million in loans were authorized by offshore trusts set up by the Wyls to advance Sam and Charles Wyly's personal business interests; \$85 million was authorized by offshore trusts set up by the Wyls to purchase real estate in the United States that the Wyls are able to use, live in and enjoy; and nearly \$30 million was authorized by an offshore trust to purchase artwork, furnishings, and jewelry that members of the Wyly family are able to use and enjoy as their own.

So regardless of the legality or illegality of this, there is something wrong with our system if this kind of money can come back into the United States and not be taxed.

And if, in fact, the legal arguments prevail and there is no legal liability, we still have to address this situation because it is outrageous and it is offensive, and it hurts average taxpayers. And so it was fascinating to listen to the discussion between Mr. Chatzky and the Ranking Member, and I am sure others will have this same discussion.

Regardless of the legality of the transactions we have discussed, common sense dictates that if individuals can control assets and use them for their personal benefit in a way that allows them to simply avoid tax liability, we should change the system.

Senator Levin, I look forward to working with you to make sure we accomplish that goal.

Mr. CHATZKY. Excuse me, Senator. May I make a comment on that, please?

Chairman COLEMAN. Yes. Very briefly.

Mr. CHATZKY. Very briefly, OK. I once was in another country and I talked to someone who lived there about their tax system, which was a flat tax, just a pure flat tax. The same tax rate applied to everyone. And I asked him, I said, are people in your country satisfied with that tax system, and he said, absolutely. I said, well, do people in your country ever do any tax planning, and he said, normally, no. But if a transaction can be structured so that it takes place outside of our country, therefore it would not be sub-

ject to the taxation, then it sometimes occurs. Then he said that the people in our country are very content. We have had this tax system in place for many years and it has worked very well. It is very simple, straightforward, and fair.

Not that you are not aware of a flat tax or other kinds of alternative proposals that might make the system both fair and equitable and easy to enforce, but my suggestion is that if you consider a system like that, then the issues that Senator Levin and I are talking about, and Senator Coleman and I are talking about would, I think, largely be resolved. I think that would go a long ways to having greater enforcement and greater respectability of the tax laws.

Chairman COLEMAN. I appreciate that, because that is the first argument you have made today, Mr. Chatzky, that would put you out of business. [Laughter.]

Mr. CHATZKY. Well, that is OK. I still have asset protection to handle.

Senator LEVIN. If I could just have one minute——

Chairman COLEMAN. Senator Levin.

Senator LEVIN. Mr. Chairman, thank you again for all you have done to make this possible here today, and your staff and my staff have been utterly extraordinary. The two cases that we have discussed today demonstrate basically that these offshore tax havens and these secrecy jurisdictions are totally out of control.

As I said before, and I mean this, I believe those tax havens that operate in secrecy have declared economic warfare on the taxpayers of the United States. We are talking here perhaps \$100 billion. The estimates vary, but it is somewhere between \$40 and \$100 billion per year. One of the reasons you don't know more precisely is because of the secrecy.

The grease that these wheels operate with is secrecy in these tax havens and we have to just simply not accept it. Create the presumption that if you want to transfer assets to tax havens, that you are going to be taxed on any income from those assets. You are going to be responsible to the IRS just as though you transferred it to a non-tax haven, into a non-secrecy jurisdiction. We have to reverse that presumption. Otherwise, we are going to be here a year, 5 years, or 10 years from now.

Today, what we saw in our report illustrates in great detail, starting with the Wylys, \$190 million of stock options moved offshore, no taxes paid for years and maybe will never be paid on parts of it. Fifty-eight offshore trusts and corporations established to cash in these options, use the cash for investments that are directed by the Wylys.

And, by the way, Enron established 440 shell corporations in one offshore jurisdiction.

And back to what we heard today, \$2 billion in capital gains erased—at least you thought you guys erased them—by fake stock trades between shell corporation whose owners are hidden. Nobody knows the owners of those two shell corporations. You can't find that out. And we have lawyers who engage in contortions, as far as I am concerned, legally and stayed blinded from what the real facts are, blinded themselves from the real facts in order to write opinions that are more likely than not going to justify these sham

trusts and shell corporations and fake economic transactions which we see here today.

So, Mr. Chairman, I again want to thank you. I think you have hit the nail on the head with the bill that you and I have introduced maybe a year ago now which would make transactions in tax havens taxable in the United States. We have to end this charade, and we are not going to be able to do it, frankly, with nuanced new regulations.

We are going to have to do it by taking this bull—and I cut short the word that I really should say, a longer word than “bull,” but it starts with the same four letters—we have got to end this, take this bull by the horns and just simply put these tax havens out of business as far as American taxpayers are concerned when there is no transparency and they hide these sham transactions in shell corporations and will not disclose to the IRS what is going on and who runs them.

So we had a lot of good testimony today, which I think was very helpful. We do appreciate, as our Chairman has said, those who did appear and did not exercise their rights under the Constitution. Those that did had a right to do so. This Subcommittee has always accepted that. But those who did show up here to attempt to answer questions, it seems to me do at least deserve our thanks for coming here, even though, frankly, I must tell you, I am utterly mystified how some of these opinions could in good conscience be written. It mystifies me.

You have seen your clients here today, your clients today had to come before this Subcommittee and say that they have either had to return, give the IRS all of the taxes that would have been owed but for these legal opinions, plus interest. Mr. Saban is now negotiating with the IRS to do the same thing.

When I asked Mr. Greenstein, how did he feel about his clients, there was no reaction, basically. Well, the process worked, he said. If this is the process and if it is working and if that is the result, we have really got to change the process.

But I also hope that you, as lawyers—and I am a lawyer—would also look at these clients that appear here today and ask yourself, did I really want to find out everything that would allow me to write an opinion which would really guide my clients in ways that would put them on a straight path instead of the ones that they now find themselves on, going head up, against the IRS? So I would hope that you folks would ask yourselves some questions, not just listen to our questions and try to answer, but ask yourselves some questions, and then I hope you would be troubled by the answers. Thank you.

Chairman COLEMAN. Thanks, Senator Levin.

The record in this hearing will remain open for 10 days.

With that, again, this hearing is now adjourned.

[Whereupon, at 2:16 p.m., the Subcommittee was adjourned.]



## A P P E N D I X

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**WRITTEN TESTIMONY OF  
COMMISSIONER OF INTERNAL REVENUE  
MARK EVERSON  
BEFORE  
SENATE COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS'  
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS HEARING  
ON  
OFFSHORE ABUSES: THE ENABLERS, THE TOOLS AND  
OFFSHORE SECRECY  
AUGUST 1, 2006**

Good morning Chairman Coleman, ranking Member Levin and members of the subcommittee. It is good to be back before the subcommittee again.

Unfortunately, it seems that each time I appear before this subcommittee it is to discuss another example of individuals or corporations trying to avoid taxation either through outright refusal to pay their fair share of taxes or through schemes and shams designed to take advantage of the complexity inherent in the tax code. Today is no exception.

This subcommittee has a long and impressive history of investigating tax havens and offshore abuses that undermine the integrity of the Federal tax system and potentially divert billions of dollars from the United States Treasury. I am pleased to be here this morning to assist you in your latest efforts to examine offshore abuses.

The IRS has also been active in investigating offshore abuses. We are very concerned both with corporations who seek to inappropriately shift profits to foreign low tax jurisdictions or get out of paying taxes altogether, as well as individuals who seek to avoid or evade U.S. taxes by moving assets to other countries. Our investigations include both routine tax examinations and, where necessary, criminal investigations of particularly abusive behavior.

However, we recognize this is an area where we still have a long way to go and I hope this morning that I do not understate the significant problems IRS encounters in handling these types of issues. They often involve other sovereign jurisdictions over which we have little or no control and with taxpayers that are often difficult to identify. As I will discuss later in my remarks, we have agreements with many jurisdictions, but there are limitations on our ability to use those agreements. And, victories are often short-lived. If we become effective in terms of enforcement in one jurisdiction, the promoters and the schemers simply move to another.

What I would like to do this morning is to offer a little background about these issues and explain why they are so difficult for us. I then want to explain how we are dealing with

these challenges, as well as lessons learned. Finally, I will discuss what we think needs to be done moving forward.

### **Background**

U.S. tax administration is complicated by the rapid pace at which our overall economy is becoming more global. A growing percentage of large and mid-size business tax filings are from multinational companies that have a variety of subsidiaries and partnerships operating within an enterprise structure where the ultimate parent is as likely to be foreign as domestic. In addition, a growing number of U.S. businesses acquire raw materials, inventory, financing, products, and services from foreign businesses.

These events are natural outcomes of an increasingly global economy and businesses have the right to optimize their global structures. Nonetheless, the complexities of globalization and cross-border activity continue to challenge U.S. tax administration. With multiple domestic and global tiered entities, it is often difficult to determine the full scope and resulting tax impact of a single transaction or series of transactions. Complexities of globalization and cross-border activity create opportunities for aggressive tax planning.

It is not just large corporations taking advantage of this globalization. Wealthy individuals are seeking ways to shelter income by moving it offshore or by participating in tax shelters organized by unscrupulous promoters who move in the shadows of the global economy.

This is complicated by the relative lack of transparency in the transactions that individuals can conduct offshore. Not only are the transactions themselves often intentionally designed, or carried out in a manner, to be abstruse, but the individual(s) engaging in the transaction, and their roles, are often intentionally difficult to identify.

Another challenge we face in this global environment is the increasing complexity of the Internal Revenue Code. As the Code continues to expand, becoming more complex and challenging to administer, large businesses and wealthy individuals are able to utilize every available resource to explore opportunities to reduce their tax liability by using the most intricate and complicated Code provisions, often in combination, to produce results not intended by Congress. Every new tax law, even those that are simple on their face, creates additional complexity while providing taxpayers with further tax planning opportunities. This adds to the challenge of administering the federal tax system. Many changes to the tax law make it more difficult for us to treat similarly situated taxpayers in a consistent manner.

### **Moving Assets/Entities Offshore**

On June 13<sup>th</sup>, I testified before your colleagues on the Senate Finance Committee regarding compliance issues relative to large and mid-sized businesses. At that hearing, I talked about how taxpayers shift significant profits offshore by manipulating the price of

related-party transactions so that the income of an economic group is earned in low-tax or no-tax jurisdictions, rather than the U.S., thus reducing the enterprise's worldwide income tax liability. Let me discuss a couple of ways in which this occurs.

The first two issues focus more on tax planning activities by multinational enterprises. The levels of aggressiveness vary from one taxpayer to another.

*Transfer of Intangibles Offshore/Cost Sharing:*

Tax issues associated with the transfer of intangibles outside the United States have been a high-risk compliance concern for us and we have seen a significant increase in recent years. Taxpayers, especially in the high technology and pharmaceutical industries, are shifting profits offshore through a variety of arrangements that result in the transfer of valuable intangibles to related foreign entities for inadequate consideration. Cost sharing arrangements are often the method of choice for this activity. The buy-in amount in cost sharing arrangements is particularly troublesome. It is often understated, resulting in the improper shifting of income offshore.

As part of our response to these issues, we proposed a comprehensive set of cost sharing regulations in August 2005. These regulations seek to ensure such arrangements do not facilitate a disguised transfer of intangible assets outside the United States in a manner inconsistent with the arm's length standard. We intend to finalize them this year.

We have also established a cost sharing Issue Management Team (IMT) to improve Service-wide coordination in the identification, development, and resolution of cost sharing issues. The IMT issued a cost sharing audit checklist in 2005 that provides guidance to field examiners for developing potential cost sharing audit issues and ensuring consistency. The team has completed its efforts to identify and review cases with a cost sharing issue to determine the impact and compliance risk. The team is developing a coordinated issue paper that will provide the basis and support for examining issues and assist with potential Appeals Settlement Guidelines. We have issued guidance to field examiners for requesting transfer pricing documentation.

*Transfer Pricing*

Taxpayers are continuing to shift significant profits offshore. Taxpayers often manipulate the price of related-party transactions so that the income of an economic group is ostensibly earned in a low tax or a no tax jurisdiction, rather than in the U.S., thus lowering the enterprise's worldwide tax burden. We apply the arms length principle to determine the appropriate allocation of income between related parties based upon the application of acceptable transfer pricing methodologies (section 482 of the Code).

In response to the significant compliance risks of transfer pricing issues, we issued a Transfer Pricing Compliance Memorandum in January 2003 that provided instruction and guidance to all field examination personnel regarding potential transfer pricing issues. Additionally, our Large and Mid-Sized Business (LMSB) Commissioner issued a

Transfer Pricing Documentation Memorandum that requires all field examination personnel to request and review taxpayer transfer pricing studies. As a subset of the transfer pricing issue category, a section 936 Termination Strategy issue has been identified for additional compliance coordination. Associated with the sunset of section 936, taxpayers have created structured transactions to transfer U.S. intangibles that were used in Puerto Rico to other low tax jurisdictions. An IMT has been established to identify, coordinate, and propose resolution alternatives for this issue. Field examiners and technical advisors will provide technical support to teams with the development of this tax issue.

The Transfer of Intangibles and Transfer Pricing issues present significant compliance challenges in the multinational corporate/enterprise tax administration arena. IRS data indicates that aggregate examination adjustments are growing, as are the amount of adjustments made per taxpayer year under examination. These examinations are resource intensive, requiring a battle of experts over the valuation of assets migrating to low tax jurisdictions, or the appropriate “arms length” value to apply to related company transactions. The level of the non-compliance is likely to increase based upon results from the past 5 years of examinations. In the short term, we are dedicating additional resources by utilizing outside experts to improve the IRS’ ability to prevail in valuation issues while in the longer term legislative fixes may be needed.

In addition to the items above, I shared two other compliance challenges in my June 13<sup>th</sup> testimony before the Finance Committee. The first was Abusive Foreign Tax Credit Transactions where taxpayers are creating complex transactions in an attempt to generate and claim foreign tax credits (FTCs) where the foreign-source income generating the credits is not taxed in the United States. The second was Abusive Hybrid Instrument Transactions where taxpayers can use hybrid instruments, hybrid entities, and similar structures to capitalize on differences between foreign and domestic tax laws because these structures are often treated differently for U.S. and foreign tax purposes. This kind of arbitrage can be the natural outgrowth of global economies and disparate tax systems. Concern exists, however, that in some cases, hybrid instruments or entities might be used to avoid U.S. tax rules.

Both of these compliance challenges are significant in terms of dollars per transaction and are not easily identified on the return nor readily disallowed upon examination. We have established IMTs to address these challenges and are evaluating options to reach the appropriate resolution based upon U.S. income tax laws.

I would now like to turn your focus to individuals and small businesses whose activities may be characterized, at best, as very aggressive tax planning and, at worst, as criminal tax evasion.

#### *Abusive Tax Avoidance Transactions*

One of the most difficult tasks the Service has encountered in addressing offshore compliance has been the identification of individual taxpayers who are involved in

offshore arrangements. By their very nature, offshore abusive tax avoidance transaction (ATAT) arrangements are designed to conceal the identity of the taxpayers and to shield their ownership of assets and income from detection. Common characteristics of the use of controlled foreign entities (trusts, corporations, partnerships, joint ventures, etc.) in ATAT arrangements include:

- Nominee-owned foreign entities that are beneficially owned and ultimately controlled by a U.S. taxpayer
- Funds (derived and diverted from U.S. business activities) that are transferred offshore and often deposited into offshore bank accounts controlled by the U.S. taxpayer through the controlled foreign entities. Funds are typically repatriated with the use of offshore debit/credit cards.
- Taxpayers participating in ATAT arrangements seldom file required International Information Returns (Forms 3520, 3520-A, 5471, 8865, FBAR, etc.) indicating ownership of, transfers to and from, and income attributable to their controlled foreign entities.

As a result of the Service's experience and continuing compliance efforts, we have discovered that the most practical way in which to identify taxpayers who are involved in offshore ATAT arrangements that are shielded by a lack of transparency is by "following the money." The Service has identified four basic components to an offshore abusive arrangement in this regard:

- Devise an overall offshore plan (the Promoter/Promotion),
- Covertly transfer funds and assets offshore (Expatriation),
- Control the funds and assets transferred offshore (Control/Ownership), and
- Access the offshore funds (Repatriation).

The following are the primary categories of ATAT arrangements we see and are addressing:

- **Multiple Entity Arrangements:** The purpose is to divert business and personal income offshore and hide ownership of the assets. Many of these include tiered structures that start domestic then funnel funds and income offshore
- **Income Stripping:** Use of false invoicing to move income offshore from a legitimate domestic business entity. Generally consists of a controlled foreign entity billing for goods or services (i.e., insurance) at excessive rates or for non-existent goods or services (i.e., advertising, consulting, management fees).
- **Economic Citizenship:** Taxpayer purchases "economic" citizenship in a tax favorable offshore jurisdiction and seeks to avoid U.S. tax liability, either by renouncing U.S. citizenship or failing to properly report income.
- **IRA/401(k) Rollover Schemes:** Taxpayer transfers IRA/401K assets to a self-directed IRA/401(k) that invests in the taxpayer's 100% owned/controlled international business company (IBC). Taxpayer has full control over the funds through the IBC, although ownership is disguised. Funds may be repatriated without reporting the income or the pre-59½, 10 % penalty.

- **Offshore Employee Leasing (Notice 2003-22, 2003-18):** Avoids/evades income and employment taxes with respect to compensation received from a closely-held U.S. entity through use of offshore & domestic employee leasing companies. An offshore “non-qualified deferred compensation plan” (NQDC) is part of the contract, but the taxpayer gains immediate access to the funds from the NQDC through loans or the use of offshore debit/credit cards.

### **Financial Privacy Laws in Foreign Jurisdictions**

Financial privacy laws in certain foreign jurisdictions are a significant hurdle in our efforts to battle offshore abusive tax shelters like those identified above. These jurisdictions deliberately attract foreign business with government policies such as enacting incentives that minimize or mitigate tax, “business friendly” regulatory/supervisory regimes such as exchange controls, disclosure requirements, and secrecy enforced by law.

It is their legal framework that makes them unique. In addition, these jurisdictions enable banks, trust companies, company incorporators, other financial intermediaries, and financial advisors resident in that jurisdiction to provide products and services to non-residents in their home countries.

These offshore secrecy jurisdictions are traditionally considered to have some or many of these characteristics:

- Little or no income tax
- Bank and/or commercial secrecy
- International banking facilities
- Modern communication and transportation facilities
- No currency controls
- Aggressive self-promotion
- Political and economic stability
- Asset protection laws
- Availability of competent professional services and ease of forming entities
- Lack of agreements with the United States requiring exchange of tax information

We are particularly concerned about offshore secrecy jurisdictions that:

- Offer the instant formation and management of foreign trusts, international business companies (IBCs) and other special purpose entities
- Lack transparency in that
  - They offer banking and financial secrecy by law and by custom (enforced by civil and criminal penalties including incarceration)
  - The beneficial owner of an entity, transaction or asset is unknown
- Does not exchange tax information with the U.S.

A few offshore secrecy jurisdictions have Tax Information Exchange Agreements (TIEAs) in place, as a means for the U.S. to receive information. However, we cannot

take full advantage of a TIEA in situations where the US person's identity is unknown. In addition, even where the U.S. is able to secure information about a U.S. taxpayer, the TIEAs do not provide for assistance with the collection of U.S. taxes from foreign-based assets. This ensures that assets transferred by U.S. taxpayers to an entity in an offshore secrecy jurisdiction remain out of touch (with the possible exception of a court-ordered "writ of repatriation" in which a U.S. person is compelled to repatriate assets or face contempt of court charges).

Over the last few years, we have negotiated TIEAs with countries such as: Antigua/Barbuda, Aruba, Bahamas, Barbados, British Virgin Islands, Cayman Islands, Isle of Man, Jersey and Guernsey. Most of these TIEAs cover the tax years beginning on January 1, 2006, for civil tax enforcement purposes and January 1, 2004 for criminal purposes. We hope these TIEAs will have a positive effect on tax compliance and transparency but the IRS does not have a meaningful track record for obtaining information under these TIEAs because of their limited coverage and recent effective dates.

#### **IRS Actions and Lessons Learned**

We have attempted to take a proactive approach to dealing with the challenges of effective tax administration in the environment described above. But, as I said earlier this is an area in which we have struggled. Our overall strategy depends on making compliance checks as often as possible, on a real-time or near-real-time basis, while being as current in our examinations as possible. We also need as much transparency, relative to taxpayer offshore activities and other indicators of risk, as possible.

In January, 2003, the Service announced a new initiative, called the Offshore Voluntary Compliance Initiative (OVCI). This initiative was aimed at bringing taxpayers who used "offshore" payment cards or other offshore financial arrangements to hide their income back into compliance with the law.

This initiative resulted in 1,321 applications representing 3,436 returns. We were able to identify 230 promoters who were previously unknown to the Service and we collected over \$270 million at a cost of approximately \$2 million. In reality, we did not have a good idea of the potential universe of individuals covered by this initiative. As a result, the incentive for taxpayers to come forward and take advantage of this initiative was diminished due to the fact that we did not have the ability to identify immediately and begin examinations for all non-participating individuals.

Contrast that with our Son of Boss initiative which we announced in May, 2004. In this instance, we had a known population of taxpayers. As a result, we had more than 1,200 taxpayers electing to participate. This is about two-thirds of the eligible taxpayers, and the total revenue collected in the form of tax, penalties, and interest has topped \$3.7 billion. More importantly, all non-electing taxpayers involved in these transactions were identified and are the subject of current examinations.

These two initiatives demonstrate clearly the challenges we face when attempting to pursue initiatives where the identity of the universe of taxpayers is unknown.

We are looking at various methods to better address issues involving cross-border/multi-national enterprise activities. We have in general found cross-functional IMTs to be successful when we employ them to provide executive oversight and focus on areas of high risk, especially when focused upon technical issues requiring significant expertise. We have used IMTs to combat tax shelters, and have expanded their use to include other areas of high compliance risk. We have also used special teams of experienced personnel to assist with the examination of specific issues in the tax shelter arena, and plan to use similar teams to address other compliance issues. Additionally, we are working to enhance the use of internal web site information to better inform examiners of high risk areas and the steps they must take to ensure consistent application of the law.

The Offshore Credit Card Program (OCCP) is a compliance initiative designed to identify taxpayers who use offshore bank accounts to hide income and offshore credit cards issued by secrecy jurisdiction banks to repatriate the unreported income. In looking at these, we find significant incidences of Foreign Bank Account Reports (FBARs) that are not filed and significant incidences of potential fraud on unreported income. We issue "John Doe summonses" to primary and third party domestic credit card processors to identify cardholders. To date, we have trained over 1,200 revenue agents to examine offshore credit card activities and identify abusive offshore tax avoidance transactions.

We are also becoming more aggressive with our promoter investigations. By conducting such investigations, the Service is able to:

- Shut Down the Promotions: Use of IRC 6700 investigations and referrals to the Department of Justice (DOJ) for IRC 7408 injunctions.
- Obtain Client Lists: Lists are generally secured through the promoter investigation. Some lists have been from a treaty partner through the Joint International Tax Shelter Information Centre (JITSIC) as well as from the Offshore Credit Card Program. Once participants are identified compliance activity is initiated.
- Parallel Investigations: Civil and criminal cases are worked simultaneously to ensure promotion is halted expeditiously.

In January 2006, in a move that I believe sharpened and improved the strategic acuity of the Service's international collaboration, the IRS and the tax administrations of nine other countries agreed to the establishment of the so-called "Leeds Castle" Group. Under this new arrangement, the commissioners of the revenue bodies of China, India, and South Korea agreed to meet regularly with their counterparts from the US, the UK, Japan, Australia, Canada, France and Germany to consider and discuss issues of global and national tax administration in their respective countries. I particularly welcome the interest and enthusiasm of my counterparts in the economically burgeoning East Asian region in participating in this arrangement and regard it as critical in light of the vast



increase in trade and interaction between their economies and our own, with correlated effects on tax administration.

Another body that I believe serves a very important strategic role for the Service in the realm of our international activities is the Joint International Tax Shelter Information Centre, or JITSIC. JITSIC, a joint effort of the Service and the tax bodies of the UK, Australia and Canada to identify and share information on a real-time basis about abusive tax avoidance transactions, has sharply improved our knowledge and understanding in a number of areas, including developments in the areas of foreign tax credit generation and so-called hybrid instruments that have been identified as among our most significant issues in corporate tax administration.

We are also pursuing a brokerage initiative which will have the dual purpose of assessing the withholding and information reporting compliance of the withholding agent and the U.S. beneficial owners of accounts established in the names of entities domiciled in secrecy jurisdictions. Two withholding agents are currently under examination, with more planned.

There are currently several Internal Revenue Code sections that provide for the application of penalties where U.S. taxpayers fail to file required information returns on foreign trusts (Forms 3520 and 3520A), foreign controlled corporations (Form 5471) and foreign controlled partnerships (Form 8865). Additionally, as a result of an agreement with the Financial Crimes Enforcement Network (FinCEN), IRS is now authorized to pursue and assess penalties under USC Title 31 for a taxpayer's failure to file Treasury Form 90-22.1 (Report of Foreign Bank and Financial Accounts or "FBAR"). To date, we have trained over 300 revenue agents with respect to foreign trusts and other offshore entities, and provided them with the tools to pursue both the information necessary to examine the offshore activities and the penalties for failure to provide such information.

In February 1995, Criminal Investigation (CI) established a formal International Strategy. One of the goals of the strategy involved placement of special agents as Attachés in foreign countries. These placements help facilitate development and utilization of information obtained from host foreign nations. The strategy has led to the placement of Attachés in eight United States Embassies around the world.

The use of undercover operations by our Criminal Investigation (CI) division is also critical to our success in investigating any offshore tax evasion scheme. The undercover agent helps us identify the primary perpetrators (promoters, accountants, and attorneys), their schemes and the movement of funds offshore and back onshore. This allows us to capture real time evidence of the crime.

#### **Limited Success**

We have experienced some limited success with our efforts. We have a number of offshore promoter investigations either completed or underway. We have permanently enjoined eight promoters of offshore schemes and we have an additional 7 injunctions pending. There are currently 124 offshore transaction promoter investigations in the

field, including 32 parallel proceedings with our Criminal Investigation (CI) division. Additionally, we have almost 4,000 open participant investigations with over 1,500 of these involving the Offshore Credit Card Program. We also have identified another 2,568 cases that have been assigned to our examination groups.

We have brought recent civil injunctions against a number of individuals including:

- A Florida couple has been permanently barred from promoting a tax fraud scheme helping customers set up offshore trusts and corporations designed to conceal income and assets from the IRS.
- The DOJ filed to block an alleged sham trust scheme used to hide income and assets in Caribbean bank accounts by two individuals in Las Vegas.

Our CI division has also been active. In FY 2005, CI initiated 197 criminal investigations as opposed to 79 in FY 2003. The prosecution recommendations have increased from 80 in FY 2003 to 126 in FY 2005. The average incarceration rate has increased from 79.1 percent to 86.2 percent over the same period. Some recent examples of CI actions include:

- An indictment against 4 people in North Carolina on numerous charges, including running an offshore tax fraud scheme from the Bahamas, using offshore credit cards, obstruction of justice, money laundering, witness tampering, and perjury.
- An indictment against a key individual in an organization that sold audiotapes, CDs and tickets to offshore seminars on “wealth-building” strategies. The individual was deported from an offshore jurisdiction and is in United States custody. He was indicted in May 2004 for conspiring to defraud the IRS and has been in custody since January 10, 2006.
- A Denver man was sentenced in U.S. District Court to five and one-half years in prison, followed by three years of supervised release, in connection with his role in a particular organization. He was also ordered to pay more than \$10,000 towards the costs of prosecution. He set up shell corporations for clients that were used to conceal nearly \$9 million in taxable income. The clients transferred millions of dollars to secret bank accounts in the Turks and Caicos Islands and other foreign countries.
- A federal grand jury in Salt Lake City indicted six individuals for promoting a tax fraud scheme that cost the Federal Treasury over \$20 million in taxes. The defendants’ scheme utilized, among other things, offshore companies, offshore bank accounts, the services of offshore nominees, and opinion letters which purported to give legal authority to the fraudulent transactions.

### **How Congress Can Help**

Though it may sound repetitive, probably the single greatest thing that Congress can do in all of these areas is to simplify the tax code. The increasing complexity of the tax code combined with the complex and dynamic business models of many taxpayers provides for extremely complex tax implications. Some arrangements are perfectly within the boundaries of the law, but complexity creates opportunities for taxpayers and those who advise them to structure transactions and entities to minimize or avoid paying taxes in ways that were not intended by Congress. At the same time, the tension created by the desire of corporations on the one hand to maximize book-earnings, and on the other hand to minimize taxable earnings and increase cash flow, presents incentives which could drive non-compliant behavior.

I do not want to overstate the value of simplification in that many of the things I have described are simply a function of individuals or promoters taking advantage of different tax structures in different jurisdictions. To a certain extent, that behavior will continue regardless of how simple the code is. But, simplification does help everyone better understand their tax obligations and decreases the probability of them being deceived by the unscrupulous.

The second thing Congress can do is take appropriate steps to increase the transparency both of transactions and of taxpayers who participate in those transactions. Our long history of tax administration has taught us that the more visible the transaction, the more tax compliant it is likely to be.

The third thing that Congress can do to assist us in these areas is to fund fully the Administration's request for the IRS' annual budget. We are pleased that the Senate Appropriations bill for FY 2007, as reported by the Senate Appropriations Committee, approved full funding for the IRS. We urge your support for that bill when it reaches the Senate floor.

In reality, both you and I are limited by what we can do because we are dealing with individuals and businesses who are hiding their assets in foreign jurisdictions that use financial secrecy as a tool to attract commerce to their country. We are left to search for ways that will reduce the incentive for taxpayers to seek out such offshore financial arrangements. I suspect those incentives will need to contain both a carrot and a stick.

There are other tax policy areas which we continue to discuss internally and once we reach consensus within Administration, we will be happy to share them with you.

### **Conclusions**

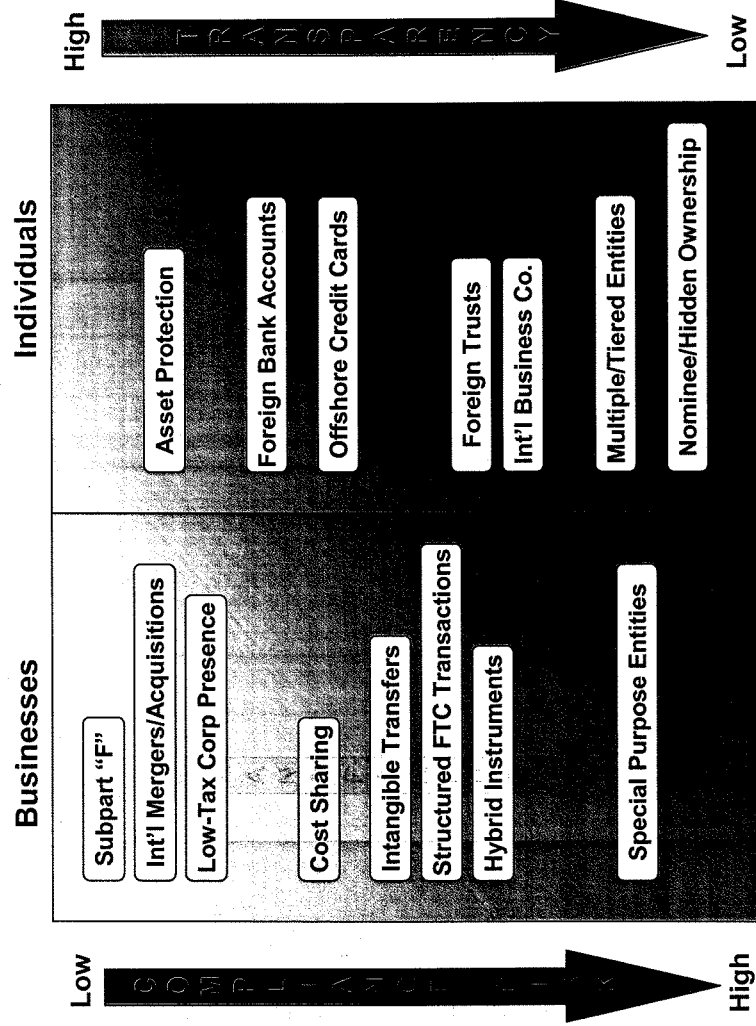
Mr. Chairman, let me repeat what I said earlier about you and this subcommittee. You have been at the forefront in investigating important areas of Federal tax non-compliance and you and your subcommittee are a respected watch-dog over everything that we do at the IRS.

The subject of the hearing this morning is no exception. Offshore tax shelters are robbing the American treasury of billions of dollars each year.

I have attempted to bring you up to date on many of the things we are doing in the offshore arena, and I hope this has been beneficial. I look forward to your continuing investigations into these areas and your assistance in halting abusive offshore tax shelters.

I appreciate the opportunity to be here this morning and I will be happy to respond to any questions.

# Offshore Activities – Risk Profile



**PREPARED TESTIMONY OF REUVEN S. AVI-YONAH, IRWIN I. COHN  
PROFESSOR OF LAW, UNIVERSITY OF MICHIGAN LAW SCHOOL BEFORE  
THE US SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,  
HEARING ON OFFSHORE TRANSACTIONS  
AUGUST 1, 2006**

I would like to thank Sens. Coleman and Levin and the Subcommittee staff for inviting me to testify today on the tax implications of offshore transactions and the international tax gap.

By way of background, I am the Irwin I. Cohn Professor of Law and Director of the International Tax Master of Law Program at the University of Michigan Law School. I hold a JD (magna cum laude) from Harvard Law School and a PhD in History from Harvard University. I have 17 years of experience in the tax area, and have been associated with or consultant to leading law firms, including Wachtell, Lipton, Rosen & Katz and Cadwalader, Wickersham & Taft. I have also served as consultant to the US Treasury Office of Tax Policy and as member of the executive committee of the New York State Bar Tax Section. I am currently Vice-Chair of the American Bar Association Tax Section Committee on VAT and a member of the Steering Group of the Organization for Economic Cooperation and Development (OECD) International Network for Tax Research. I have published ten books and over 60 articles on US domestic and international taxation, and have twelve years of teaching experience in the tax area (including basic tax, corporate tax, partnership tax, and international tax) at Harvard, Michigan, NYU and Penn Law Schools.

My testimony will address the questions raised in the invitation letter from Sens. Coleman and Levin dated July 24, 2006. Some of the following testimony is based on an article I co-authored with Joe Guttentag, but I remain solely responsible for what follows.<sup>1</sup>

1. The Extent to Which U.S. Persons move assets offshore to avoid U.S. Taxation.

Let me provide one example to illustrate the point. In July of 1999, the Justice Department entered into a plea bargain with one John M. Mathewson of San Antonio, Texas. Mr. Mathewson was accused of money laundering through the Guardian Bank and Trust Co. Ltd., a Cayman Islands bank. Mr. Mathewson was Chairman and controlling shareholder of Guardian, and in that capacity had access to information on its depositors. In return for a reduced sentence, Mr. Mathewson turned over the names of the persons who had accounts at Guardian.

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<sup>1</sup> See Joseph Guttentag and Reuven Avi-Yonah, Closing the International Tax Gap, in Max B. Sawicky (ed.), Bridging the Tax Gap: Addressing the Crisis in Federal Tax Administration (EPI, 2005), 99.

The result was an eye-opener: The majority of the accounts were beneficially owned by US citizens, and the reason they used a Caymans bank had nothing to do with laundering funds earned in criminal activities. Instead, the accounts were in the Caymans for the purpose of evading federal income taxes on income earned legally, relying on the Caymans' lack of an income tax and promise of bank secrecy. The IRS ultimately settled 1,165 cases with the individual taxpayers for a total collection of \$3.2 billion—an average of \$1.7 million per taxpayer.<sup>2</sup>

Guardian's US clients relied on four simple realities: First, in today's world, anyone can open a bank account in the Caymans for a minimal fee over the internet, without leaving the comfort of their home. Second, the account can be opened in the name of a Caymans corporation, which can likewise be set up long-distance for minimal transaction costs (as evident from any perusal of the back pages of the *Economist* magazine, where law firms advertising such services abound). Third, money can be transferred into the account electronically from the US or from abroad, and in most cases there would not be any reporting of such transactions to tax authorities. Finally, the funds in the Caymans account can then be used for investments in the US and in other high tax jurisdictions, and there would generally be no withholding taxes on the resulting investment income, no Caymans taxes, and no information on the true identity of the holder available to the IRS or any other tax authority. Significantly, other than the use of the Caymans, both the underlying funds that were deposited in the Guardian accounts, and the investment income, were generally purely US domestic transactions, and the tax evaded was US income tax on US source income beneficially owned by US residents.

The ability to use the Caymans and other offshore tax havens to evade income taxes is a relatively recent phenomenon. Since about 1980 there has been a dramatic lowering of both legal and technological barriers to the movement of capital, goods and services, as countries have relaxed their tariffs and capital controls, much of the world economy has shifted from goods to services, and electronic means of delivering services and transferring funds have developed.

At the same time, the tools used by tax administrations to combat tax evasion have not changed significantly: Most tax administrations are limited to enforcing taxes within their jurisdiction, and for international transactions, can only rely on outdated mechanisms like exchange of information under tax treaties with other high-tax countries, which are unavailing for income earned through tax haven corporations. Simply put, we have the technology which enables people to conduct their affairs without regard to national borders and without transparency, while restricting tax collectors to geographic borders, meaningless in today's world.

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<sup>2</sup> Boyd Massey, *Convicted Bank Chairman is Key to Dozens of New Tax Haven Cases*, 1999 TNT 171-2; Cynthia Blum, *Sharing Bank Deposit Information with Other Countries: Should Tax Compliance or Privacy Claims Prevail*, 6 Fl. Tax Rev. 579 (2005).

The US legitimately boasts one of the world's higher compliance rates for tax collections. Most of the taxes collected by the IRS are from income that is subject either to withholding at source (e.g., wages) or to automatic information reporting to the IRS by financial institutions (e.g., interest or dividends from US payors). When neither withholding at source nor automatic information reporting is present, compliance falls precipitously.

The IRS has recently estimated that in 2001 there was a total "tax gap" (i.e., a difference between the taxes it collected and the taxes it should have collected under existing law) of between \$312 and \$353 billion, or about 16% of total taxes owed.<sup>3</sup> A large portion of this gap results from income that is subject to neither withholding nor information reporting, such as most income of small businesses and income earned from foreign payors. For these types of income, the compliance rate falls from over 90% to under 70%.<sup>4</sup>

No one, including the IRS, has a good estimate of the size of the international tax gap. This is not surprising given that the activities involved are illegal, but one can make an educated guess based on a few publicly available numbers. In 2003, the Boston Consulting Group estimated that the total holdings of cash deposits and listed securities by high net worth individuals in the world were \$38 trillion, and that of these, \$16.2 trillion were held by residents of North America. Out of these \$16.2 trillion, under 10 percent was held offshore (as compared with, for example, 20-30% offshore for Europe and 50-70% offshore for Latin America and the Middle East).<sup>5</sup>

If one translates this estimate into approximately \$1.5 trillion held offshore by US residents, and if one assumes that the amount held offshore earns 10% annually, the international component of the tax gap would be the tax on \$150 billion a year, or about \$50 billion. This figure is in the mid range of estimates of the international tax gap in 2002 by former IRS Commissioner Charles O. Rossotti (\$40 billion) and by IRS consultant Jack Blum (\$70 billion).<sup>6</sup> As an order of magnitude, an estimate of \$50 billion for the total international tax gap (for each tax year) appears congruent with the \$3.2 billion actual recovery by the IRS from a single Cayman bank (for multiple tax years).

## 2. The Potential for Offshore Entities to Serve as a Vehicle for Circumventing U.S. Tax Laws.

U.S. Tax Law currently includes several provisions designed to prevent U.S. residents from using offshore entities to circumvent U.S. tax law. In particular, the anti-deferral rules (primarily Subpart F, IRC secs. 951-964, and the PFIC rules, IRC secs. 1291-1298)

<sup>3</sup> Internal Revenue Service, The Tax Gap, [www.irs.gov/pub/irs-utl/tax\\_gap\\_facts-figures](http://www.irs.gov/pub/irs-utl/tax_gap_facts-figures) (2005).

<sup>4</sup> Henry J. Aaron and Joel Slemrod (eds.), The Crisis in Tax Administration. Washington, DC: The Brookings Institution (2004).

<sup>5</sup> Boston Consulting Group, Global Wealth Report, [www.bcg.com/publications/PUBID=899](http://www.bcg.com/publications/PUBID=899) (2004). For consistent figures see also Merrill Lynch, World Wealth Report, [www.ml.com/media/18252.pdf](http://www.ml.com/media/18252.pdf) (2004).

<sup>6</sup> Martin A. Sullivan, US Citizens Hide Hundreds of Billions in Cayman Accounts, 103 Tax Notes 956 (2004).

provide for current taxation of US shareholders on certain types of income (primarily passive income) earned through foreign corporations. However, it is unclear to what extent the IRS is successful in enforcing these rules. In particular, the PFIC rules apply to any US share ownership in a foreign corporation that earns primarily passive income. Since the US shareholder does not have to control the foreign corporation, it is difficult for the IRS to adequately monitor how many US citizens or residents own shares in a PFIC, especially in situations in which treaty information exchange is not available (e.g., when the PFIC is located in a tax haven and bank secrecy provisions apply).

For foreign trusts, US tax law provides for current taxation (as “grantor trusts”) of trusts with current US beneficiaries (IRC sec. 679). However, as discussed below, it may be possible to structure foreign trusts in a way that avoids this rule. If a foreign trust is regarded as unrelated to a US settlor, it may in turn own shares in foreign corporations without triggering Subpart F or the PFIC rules (since the US settlors do not own shares in the corporations directly or by attribution).

### 3. The Intersection between U.S. Tax Law and Offshore Trust Law

Foreign trust law in many tax haven jurisdictions (e.g., the Isle of Man) allows the appointment of trust “protectors” which have significant control over decisions of the trustees. This enables US residents to set up foreign trusts that have no current U.S. beneficiaries (the current beneficiaries are foreign charities) and thus avoid the application of IRC sec. 679. The U.S. residents then appoint friends or employees as protectors of the trust. The desired tax result is that the trusts are considered unrelated to the US settlors and therefore may use their funds (directly or through controlled corporations in tax havens) in ways that benefit the US settlors (such as loans, purchases of real property, etc.), without triggering any US tax consequences. The settlors are in practice assured (because of their close relationship with the protectors) that the trusts will make no current distributions and that upon their death the assets will be distributed to contingent U.S. beneficiaries (typically their children).

### 4. The Effect of Foreign Jurisdiction Secrecy Rules on the Efficacy of Tax Law.

Foreign tax haven jurisdictions typically have strict bank secrecy laws that prohibit release of depositor information. The US currently has bilateral information exchange agreements with several tax haven jurisdictions. However, most of the existing agreements are restricted only to criminal matters. Criminal matters are a very small part of overall tax collections, and pose very difficult evidentiary issues in the international context. Moreover, the agreements sometimes require the subject matter to be criminal in both the US and the tax haven, which would never be the case for pure tax evasion. In addition, they typically require the US to make a specific request relating to particular individuals, and they also typically do not override bank secrecy provisions in tax haven laws. These limitations mean that existing tax information exchange agreements, while helpful and important in some cases, are of limited value in closing the overall international tax gap.



For example, a US resident may transfer funds to a foreign nongrantor trust with an unrelated trustee and a formally unrelated protector. The trust is located in the Isle of Man, which is covered by the US/UK tax treaty and thus subject to broad exchange of information. However, loans to the US settlor from the trust can be made via a Cayman Islands conduit. As a result, the interest paid back to the conduit is not covered by effective information exchange and the US payor has no way of knowing who is the ultimate beneficial owner of the funds. Thus, the IRS is unlikely to find out about this arrangement, which it could challenge (if it knew about it) as a disguised distribution from the trust (which would also render the trust a grantor trust whose income is taxable to the US settlor/beneficiary under IRC sec. 679).

#### 5. The Adequacy of Reporting and Withholding Rules.

Under current US rules, withholding is required (under IRC secs. 1441-1442) if the U.S. payor knows (or has reason to know) that the payment is subject to withholding. Similar rules apply to information reporting. However, if a US payor receives a Form W-8BEN from a payee certifying that it is a foreign corporation, it may not withhold or submit Form 1099 (information report) to the IRS, even if it knows that the foreign corporation is de facto controlled by a US person.

#### 6. Recommendations to Address Offshore Tax Abuses.

##### a. Increased IRS enforcement.

It is well known that the IRS has in recent years faced an increased workload with diminished resources. From 1992 to 2001, IRS “full time equivalent” staff decreased by about 20,000 positions. This trend has been reversed more recently, but as former Commissioner Rossotti has written, the increase is not enough to keep up with the increase in complexity of the tax system and the size of the economy.<sup>7</sup> Congress has repeatedly in recent years increased the complexity of our tax law without adding funding to the IRS. Bipartisan groups like the Committee for Economic Development have recently called for more resources and political support to be given to the IRS.<sup>8</sup>

I believe the IRS should dedicate more resources to attempting to close the international tax gap. In particular, the IRS should give more priority, and be given more resources, to audit compliance with existing laws requiring US taxpayers to report ownership of foreign bank accounts and stock in foreign corporations. Moreover, the IRS should focus on auditing businesses relying on e-commerce in overseas transactions, which are particularly susceptible to abuse. If the Mathewson case is any indication, such increased attention may generate many dollars in tax revenue for every dollar spent on enforcement.<sup>9</sup>

<sup>7</sup> Charles O. Rossotti, Letter to Senators Charles Grassley and Max Baucus (March 22, 2004).

<sup>8</sup> Committee for Economic Development, *A New Tax Framework: A Blueprint for Averting a Fiscal Crisis* (2005).

<sup>9</sup> For example, transfers by US banks to foreign banks, such as occurred in the Mathewson case, generate bank records which can be audited by the IRS. Similar records may not exist for transfers from foreign

b. Bilateral information exchange.

The Organization for Economic Cooperation and Development (OECD) has recently modified Article 26 (Exchange of Information) in its model income tax treaty, and has adopted a model Tax Information Exchange Agreement (TIEA), both of which are intended to address the problems with current exchange of information agreements discussed above. Under the new Article 26 and model TIEA, exchange of information is automatic (rather than just by request), relates to civil as well as criminal tax liabilities, does not require “dual criminality” or suspicion of a crime other than tax evasion, and overrides bank secrecy provisions in domestic laws. I believe the US should renegotiate its existing tax treaties and exchange of information agreements to incorporate all the changes made by the OECD in its model treaty and TIEA.

I will discuss below the steps I believe are needed to induce tax haven jurisdictions to negotiate such agreements with the US. For other jurisdictions that are not tax havens, the inducement is the information they can obtain from the US on their own residents. To ensure such information is available, the Treasury should finalize regulations proposed in 1999 that require US banks and financial institutions to collect information on interest payments made to overseas jurisdictions when the interest itself is exempt from withholding under the portfolio interest exemption.<sup>10</sup> The Treasury has recently proposed to limit such regulations to 16 designated countries, but as Blum writes, there is no legitimate privacy or other reason to impose such limitations. The banks should collect all the information, and the Treasury should use its existing authority not to exchange it in situations in which it might be misused by non-democratic foreign governments (e.g., when peaceful, pro-democracy organizations use US bank accounts).

c. Cooperation with OECD.

Current Treasury policy is to focus on bilateral agreements to obtain needed information exchange cooperation. However, the OECD has been at the forefront of persuading tax haven jurisdictions to cooperate with information exchange, and is an organization that the US had traditionally played a leading role in and whose work benefits both governments and the private sector. The US should cooperate with the OECD and other appropriate international and regional organizations in their efforts to improve information exchange and in particular to persuade the tax havens of the world to enter into bilateral information exchange agreements based on the OECD model. The OECD has made significant progress since it began focusing on this issue in 1998, but more needs to be done, both on persuading laggard jurisdictions to cooperate and on increasing the level of information exchange available from cooperating jurisdictions.

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banks or non-bank networks (e.g., the *hawala* trust-based network). These types of transfers are also used by terrorists and it would be advisable to use the well developed expertise of the IRS to combat both tax evasion and terrorist financing activities. Similarly, more use can be made of credit card records and other data mining techniques to establish which US taxpayers have foreign accounts that they have not disclosed (as required by current law) on their tax return.

<sup>10</sup> Blum, *supra*.

d. Incentives to tax havens.

The US should adopt a carrot and stick approach to tax havens in order to provide incentives to cooperate with information exchange. In particular, the US and other donor countries, multilateral and regional organizations should increase aid of a type which would enable those countries to shift their economies from reliance on the offshore sector to other sources of income.

It should be noted that the common perception that the benefits of being a tax haven flow primarily to residents of the tax haven is misguided. The financial benefits of tax haven operations, while funding a minimal level of government services, often flow primarily to professionals providing banking and legal services, many of whom (like Mr. Mathewson) live in rich countries, rather than to the often needy residents of the tax havens. Thus, with some transitional support, it is likely that most of the tax havens would see the welfare of their own residents improve as they wean themselves from dependence on the offshore sector.

e. Sanctions on non-cooperating tax havens.

In the case of non-cooperating tax havens, I support the US Treasury using its existing authority to prospectively deny the benefits of the portfolio interest exemption to countries that do not provide adequate exchange of information.<sup>11</sup> This step is necessary, in my opinion, to prevent non-cooperating tax havens from aiding US residents to evade US income tax.

A principal problem of dealing with tax havens is that if even a few of them do not cooperate with information exchange, tax evaders are likely to shift their funds there from cooperating jurisdictions, thereby rewarding the non-cooperating ones and deterring others from cooperation. Thus, some jurisdictions have advertised their refusal to cooperate with the OECD efforts.

However, if the political will existed, the tax haven problem could easily be resolved by the rich countries through their own action. The key observation here is that funds cannot remain in tax havens and be productive; they must be reinvested into the rich and stable economies in the world (which is why some laundered funds that need to remain in the havens earn a negative interest rate). If the rich countries could agree, they could eliminate the tax havens' harmful activities overnight by, for example, refusing to allow deductions for payments to designated non-cooperating tax havens or restricting the ability of financial institutions to provide services with respect to tax haven operations.

The EU and Japan have both committed themselves to tax their residents on foreign source interest income. The EU Savings Directive, in particular, requires all EU members to cooperate in exchange of information or impose a withholding tax on interest paid to

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<sup>11</sup> See IRC section 871(h)(6).

EU residents.<sup>12</sup> Both the EU and Japan would like to extend this treatment to income from the US. Thus, this would seem an appropriate moment to cooperate with other OECD member countries by imposing a withholding tax on payments to tax havens that cannot be induced to cooperate in exchange of information, without triggering a flow of capital out of the US.

f. Changes to IRC sec. 679.

Under IRS sec. 679, foreign nongrantor trusts are treated as such, rather than as grantor trusts, because they do not have a current US beneficiary. They may, however, have contingent US beneficiaries, who will become current beneficiaries after the US settlor's death. The IRS should consider amending IRC sec. 679 to treat as grantor trusts all foreign trusts with current or future US beneficiaries, because the relationship between the trust protectors and the settlor makes it highly likely that all trust income that is not currently used to benefit the settlor will in fact be distributed to the contingent beneficiaries, rather than to the current non-US beneficiaries.

g. Distributions from Foreign Trusts.

Foreign nongrantor trusts may use their assets in various ways that directly benefit the settlors, even though they are not current beneficiaries. For example, they could (directly or through foreign corporations they control) purchase US real estate, jewelry and art collectibles for the settlors, make US investments as directed by the settlors, and lend the settlors money. These transactions may in fact constitute trust distributions under current law, in which case the trusts become grantor trusts under IRC sec. 679 since they have current US beneficiaries. However, to the extent this is not the case, the law should be changed to prevent such direct benefits from inuring to US settlors without any US tax consequences.

h. Definition of Control under IRS sec. 679.

The IRS should consider treating foreign trusts as grantor trusts when they are in fact controlled by protectors who are close collaborators and employees of the settlors. In assessing whether a foreign trust is related to the settlor, a flexible standard of control (such as that used under IRC sec. 482 to test whether parties are related) should be used, rather than a bright line rule that inevitably has loopholes built into it. Similar rules can be applied for purposes of applying Subpart F and the PFIC rules to foreign corporations.<sup>13</sup>

i. Withholding and Information Reporting.

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<sup>12</sup> EU Directive 2003/48/EC on Taxation of Savings (2003).

<sup>13</sup> For an example of a court applying such a standard for Subpart F purposes see *Garlock, Inc. v. Comm'r*, 489 F.2d 197 (2<sup>nd</sup> Cir. 1973).

The IRS should revise its regulations (under IRC secs. 1441-1442) to provide that US payors may not accept W8-BEN as evidence of foreign status, and must issue Form 1099s, when they know (or have reason to know) that payments to foreign corporations in fact inure to the benefit of US persons.

#### 7. Conclusion.

I believe that the international tax gap is a significant component of the overall tax gap and may in fact be much larger than some components that have attracted more public and IRS attention, like corporate tax shelters or EITC overpayments. I also believe that in order to maintain any kind of tax system, the US public needs to be confident that current law can be enforced and that tax evasion will be caught and prosecuted. Thus, I hope that bipartisan support can be found for taking the steps identified above to close the international tax gap. These steps offer the potential of raising additional revenue without raising taxes. Moreover, these steps can help level the playing field between ordinary Americans who pay their fair share of taxes and others who do not.

**United States Senate  
Committee on Homeland Security and Governmental  
Affairs  
Permanent Subcommittee on Investigations**

**9:00 a.m., Tuesday, August 1, 2006 - Dirksen 106**

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**Hearing on**

**"Offshore Abuses: The Enablers, the Tools and Offshore Secrecy"**

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**Prepared Statement/Testimony  
of  
Gary M. Brown  
Chairman – Corporate Department  
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.**

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**Opening Remarks**

Chairman Coleman, Ranking Member Levin, and Members of the Subcommittee – thank you for the invitation to share my thoughts on certain United States federal securities law implications of certain aspects of your ongoing investigation into abusive tax shelters and tax havens. I have prepared detailed written testimony that addresses several of the underlying securities law concepts that appear to be at issue in certain of the transactions under investigation. I also have brief opening remarks, during which I intend only to highlight the more important aspects of my prepared testimony. I would respectfully request that the full text of my written testimony be entered into the record of this hearing.

The United States federal securities laws are based upon the principle of full disclosure. The disclosure that is required by those laws comes in many forms – information that is required when a company is selling securities; information about the persons seeking to acquire ownership of U.S. public companies and information about the officers, directors and significant shareholders of U.S. public companies. To the extent that the information that is required to be disclosed by U.S. federal securities laws is complete and accurate, the investing public has information with which to make an investment decision. Thus comes the most important by-

product of complete and accurate information – trust. Without trust in the underlying information that is disclosed about companies, the markets simply will not function – or will do so in a very imperfect manner.

We have all seen what happens when the investing public loses trust in the financial marketplace. Think – Enron, WorldCom, Tyco, Global Crossing and the list that could go on and on. Indeed, one of the purposes of the Sarbanes-Oxley Act of 2002 was to attempt to restore the public trust in the marketplace – to make financial statements of public companies are transparent and reliable. But there is much more to transparency and to what is required to and should be disclosed by companies offering securities in the United States. Some of those requirements and their importance to the investing public are discussed in detail in my written testimony. Concerns that these requirements are meant to address include:

- Purported “private placements” of securities by U.S. companies to purportedly independent off-shore entities that, in fact, are controlled by promoters or affiliates of the U.S. company issuing the securities. Promoters have used these off-shore vehicles to trade illegally in their own stocks, to engage in a practice known as “painting the tape” – generating fictitious trades to drive up stock prices. These securities are then resold to U.S. investors without full disclosure – these types of actions strike at the heart of the purpose of, and indeed, in some cases, violate the Securities Act of 1933.
- Concentration of share ownership in U.S. public companies by affiliated groups that exceeds reporting thresholds imposed by the Securities Exchange Act of 1934. These prevent the companies in question from determining the identities of large beneficial owners and can give the appearance of greater liquidity, in the way of public float, in the market for the security in question.

To the extent that overseas companies are used to shield information that is difficult to discern even with domestic entities, the use of off-shore entities in so-called “secrecy” jurisdictions, without question, exacerbates the issue of lack of transparency in the U.S. securities markets. From all appearances, it is becoming increasingly commonplace to find an off-shore connection in cases of security fraud. In the late 1990's, A.R. Baron & Co. and 13 of its former officers and employees were convicted in New York for running an organized criminal enterprise. Baron was what is often referred to as a “boiler room,” pushing questionable stocks to investors – their investors lost more than \$75 million over a 5 year period. In the Baron case, Liberian shell companies and accounts in the Isle of Jersey were used to trade in the stock that Baron was underwriting, a violation of U.S. securities laws. Illegal profits were sheltered – from tax authorities and creditors – in a Cook Islands trust. A New York attorney prepared the trust documents and a so-called “protector” of the trust, located in New York, managed the trusts affairs. The “protector” was one of the defendants' fathers. The Cook Island trustee did business in New York through one of the largest banks in Australia, which is reported to have refused to honor a New York subpoena on the grounds that to do so would violate Cook Islands bank secrecy laws.

I venture to say that the principal attraction of doing business in off-shore havens is not tax rates. The “benefits” that are almost always present in many of these jurisdictions are: strict bank and corporate secrecy, lack of transparency in financial dealings and the lack of any meaningful regulation or supervision in the financial services area. The lack of transparency and the strict secrecy is particularly troublesome because it prevents regulators from, among other things, determining true beneficial ownership of off-shore entities (particularly when ownership sometimes is evidenced only by “bearer” instruments).

Numerous internet websites solicit applications to open bank accounts, purchase shell companies or even establish personal banks off-shore; many take applications by e-mail. According to one web page, 100,000 American millionaires have “disappeared” (*i.e.*, moved off-shore) because “hugely profitable investments are being hidden from you by a cartel of lawyers, regulators and Wall Street special interests.” The site then says “Click here for details.” This website illustrates how easy it is today to take advantage of (or to be taken advantage of by) off-shore venues.

It has been said that the absence of responsible supervision in off-shore jurisdictions also encourages financial institutions to engage in reckless behavior which, as the near-collapse of Long Term Capital taught us, could result in disastrous consequences for our domestic financial institutions and the economy if regulators do not do something to control such activities. Those promoting “tax products” are not above attempting to avoid compliance with securities laws. Some ten plus years ago, I personally was involved in a transaction that resulted in significant cash distributions to the shareholders of a U.S. public company. One shareholder, who also was the company’s founder and a director, received more than \$100 million. Following announcement of the transaction, this gentleman had stated publicly that he had great confidence in the company and did not intend to “sell a single share” of his stock in the company. He was approached by investment advisors, however, who were promoting a tax scheme by which he could avoid payment of the taxes through transfers of the shares to off-shore entities for a brief period of time. When asked if the validity of the tax scheme was dependent upon the transaction being a “true sale” of the securities, the bankers stated that it did. The shareholder was advised that he would, as required by U.S. securities laws, be required to report the “sale,” and to consider how that would be consistent with his statement that he would not sell a single share and whether the reacquisition of the shares would generate potential liability under section 16 of the Securities Exchange Act of 1934. The bankers promoting the transaction, however, objected to the shareholder reporting the sale, pointing out that the securities were going to be immediately (same day) returned to the shareholder. This particular gentleman understood the consequences of what was being discussed and elected to forego the tax scheme and pay his taxes. This, however, like the more detailed example in my written testimony with respect to prepaid variable forward contracts, points to the sometimes inconsistent treatment given transactions under tax and securities laws and the willingness of some to “bend the rules” in one area in pursuit of a result in another.

The United States should continue to explore and implement effective measures to break down the culture of secrecy and obstruction that prevails in many of these off-shore havens. These measures could include legislation or regulations that make doing business in off-shore



jurisdictions less attractive and profitable for U.S. citizens, stricter oversight of the securities side of financial institutions that do business with off-shore entities, and greater regulation, both in terms of substantive requirements and disclosures, of what purport to be "off-shore" securities offerings by U.S. companies and their affiliates. Some of the policy considerations are addressed in my written testimony.

But above all, I believe that I can assure you that aggressive enforcement of the securities as well as the tax laws will be a sound step in continuing to restoring confidence in the fairness of the American securities markets. I can tell you that in the now five years since the collapse of Enron, there is nothing that gets the attention of the business world more than watching investment bankers, executives, lawyers and others who manipulate our system of securities laws convicted and sent to prison.

So let me finish as I began, with the concepts of full disclosure and trust. It is reported that one out of every two adult Americans have invested in the U.S. capital markets that are the crown jewel of our economy. They have done so because they had trust and confidence in a system that provides the information investors need to make wise investment decisions. As we all know from the long history of securities regulation, however, you can't legislate trust. Whatever the detail of the law or regulation, persons will look for ways to circumvent or will simply violate the law. You, however, can ensure that the laws and regulations require complete disclosure and that the penalties for betraying the trust reposed by the investing public are severe and certain.

Thank you again, Mr. Chairman. This Subcommittee has a great tradition. I am quite honored to appear before and to share my thoughts with you.

I would be happy to respond to any questions.

**Prepared Testimony<sup>1</sup>**

Chairman Coleman, Ranking Member Levin, and Members of the Subcommittee – thank you for the invitation to share my thoughts regarding issues that are of vital importance to our nation’s capital markets. As many of you know, I had the privilege of assisting this Committee in 2002 while I served as Special Counsel at the full committee level in the Enron investigation. I now have the good fortune to practice law with one of your former colleagues, Howard Baker. When not actively practicing securities law, which I have done for some 25 years, I also have the privilege of working with the Practising Law Institute where I author one of their securities treatises and speak at certain of their programs on securities law issues. I also am an adjunct professor of law at the Vanderbilt University School of Law where I teach securities law.

The United States federal securities laws are based upon the principle of full disclosure. The disclosure that is required by those laws comes in many forms – information that is required when a company is selling securities; information about the persons seeking to acquire ownership of U.S. public companies and information about the officers, directors and significant shareholders of U.S. public companies. To the extent that the information that is required to be disclosed by U.S. federal securities laws is complete and accurate, the investing public has information with which to make an investment decision. Thus comes the most important by-product of complete and accurate information – trust. Without trust in the underlying information that is disclosed about companies, the markets simply will not function – or will do so in a very imperfect manner.

We have all seen what happens when the investing public loses trust in the financial marketplace. Think – Enron, WorldCom, Tyco, Global Crossing and the list that could go on and on. Indeed, one of the purposes of the Sarbanes-Oxley Act of 2002 was to attempt to restore the public trust in the marketplace – to make financial statements of public companies transparent and reliable. But there is much more to transparency and to what is required to and should be disclosed by companies offering securities in the United States. Some of those items and their importance to the investing public are discussed below. To the extent that overseas companies are used to shield information that is difficult enough to discern even in domestic entities, without question, such use exacerbates the issue of lack of transparency in the U.S. securities markets.

Your current investigation, as did the Committee’s investigation in 2002, serves as an alarm that the next imaginative way to attempt to circumvent the spirit, if not the letter, of the United States federal securities laws is only as far away as the length of our memories. Consider the following findings of a United States Senate committee:

- Americans have become suspicious of banking and business practices that, in the public view, have undermined the prosperity of [the past decade].
- Congressional investigations have exposed cases of double-dealing in the securities business. Self-dealing and outright fraud (not the least of which

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<sup>1</sup> Portions of this written testimony are excerpted from my book, *Soderquist on the Securities Laws*, Practising Law Institute (5<sup>th</sup> ed. 2006).

involved a gigantic, rapidly growing energy operation) have become associated with erosion of the stock market.

- Senate hearings have revealed financial irregularities of large New York banks, their executives, affiliated securities companies, and Wall Street investment bankers and securities analysts.
- Leading Wall Street investment banks are under fire for their lending and investing practices. Private side deals and tax avoidance have evoked much criticism of executives and their corporate activities in banking and commerce.

The problem is that these findings that sound as if they are the headlines of 2002 and beyond are actually the findings of a 1932 Senate committee investigating the causes of the 1929 stock market crash. The energy company was not Enron – it was a company run by Sam Insull. The investment banks were not those that had prominent roles in the 2002 collapse of Enron; however, they were their direct corporate predecessors. It does prove the adage that one who forgets history is doomed to repeat it.

What I have done in the following written testimony is provide an overview, first, of the differences under tax and securities laws of a financial instrument known as a prepaid variable forward contract as well as why that instrument came to be developed and how it is used by large shareholder to hedge securities positions. I then provide an overview of various provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 and how the spirit, if not the letter, of those laws can be circumvented by affiliates of companies through sales of securities to off-shore entities.

#### ***Tax Versus Securities Law Treatment of Prepaid Variable Forwards***

Your current investigation also underscores the fact that United States tax laws and United States securities laws often are directly at odds with one another. Nowhere is this difference more pronounced than with the disparate treatment given a certain derivative instrument known as a “prepaid variable forward” contract (“PPVF”).

PPVFs were designed as ways to manage (hedge) equity risk after Congress passed the Taxpayer Relief Act of 1997. That legislation amended what constitutes a “constructive sale” – when a transaction is considered a sale for tax purposes even when no asset (in this case, securities) actually is exchanged. Hedges are used when one, perhaps, is “bullish” on a stock and does not want to sell it because of tax considerations but nevertheless wants to diversify his or her portfolio and generate liquidity (cash). Until 1997, the “perfect” hedge for one wishing to limit his or her risk to a large securities position was the “short sale against the box.”

After 1997, because of the changes in the constructive sale rules, many traditional hedging strategies became ineffective for tax deferral. In order not to run afoul of the constructive sale rules and trigger taxable gain, taxpayers must retain the potential to make or lose money during the hedge. Accordingly, the PPVF was “born” – and marketed by securities firms under a number of different acronyms – *e.g.*, TRACES, STARS.

In a PPVF, the taxpayer receives an immediate cash payment equal to the present value of a certain dollar value of securities at a future date (referred to as the settlement date), which typically is three to five years after the PPVF is entered into. For example, a taxpayer holding 2 million shares at a current market value of \$50 per share might receive \$80 million today in exchange for his or her agreement to deliver \$100 million worth of the securities at some date in the future. The PPVF contract also typically would provide for a minimum price at settlement (in this example, assume \$50), a maximum price (in this example, assume 125% of the current market price, or \$62.50), and might provide for 20% of the growth in the stock price beyond that ceiling to be retained by the taxpayer. Typically, the taxpayer can settle the position when the PPVF expires with either cash (in this case \$100 million) or deliver the securities with a value of \$100 million. The investment bank writing the PPVF would also hedge its position, typically by selling short and, in many cases would borrow from the taxpayer the shares to cover the investment bank's short position.

In the example above, the taxpayer would be fully protected below the current market price; retain all growth in the stock between \$50 and \$62.50 and 20% of any growth above \$62.50. The actual number of shares to be delivered at settlement, however, will not be determined until the settlement date – hence the “variable.” That uncertainty as to the number of shares to be delivered avoids the constructive sale rules and allows the taxpayer to defer payment of taxes. At settlement, the taxpayer is required, subject to the maximum and minimum, to deliver \$100 million of securities. If the market price of the stock has fallen below \$50 (the minimum), the taxpayer simply delivers all 2 million shares. If the market price of the stock at settlement is between \$50 and 62.50, the taxpayer delivers \$100 million in securities; accordingly, if you assume that the market price at settlement is \$60, the taxpayer would deliver 1,666,666 shares (\$100 million divided by \$60) and retain 333,334 shares. If the market price at settlement is at or above the maximum, the taxpayer would deliver 80% of his or her shares since the taxpayer retained 20% of the value above that price. Alternatively, the taxpayer could settle the position in cash, making the PPVF appear as a combination of a put, a call and a loan all rolled into one instrument.

Congress indicated when it passed the constructive sale rules that one could hedge a position with options (puts and calls) and thus create a collar so long as the hedged position is not “abusive.” Congress did not define “abusive” and the Internal Revenue Service has yet to issue regulations in this area. In a Committee report, however, Congress gave as an example of a put equal to 95% of the current market price and a call that was sold giving away all appreciation above 110% of the current market price. Believing that Congress would not deem its own example as “abusive,” most practitioners have used the 15% band in Congress’ example as the minimum band of upside/downside.

Although one also can structure a “no-cost collar” using a combination of a put and a call, some also desire to obtain liquidity (cash) to reinvest in other securities. The problem with a collar is that if one seeks to borrow against that position, Federal Reserve margin rules limit borrowing to not more than 50% of value of the position. In the case of a PPVF, however, one can generate 80 to 90% of the value of the market price as a cash advance. It generates more money than an outright sale (because of the tax deferral) and does not lock the person into a sale because at settlement, one can settle in cash and keep the shares. The entire proceeds of the

PPVF also can be reinvested in other equities in order to diversify – they are not subject to the Federal Reserve’s margin requirements.

For securities law purposes, however, the entry into the PPVF is treated as a sale of the maximum number of shares that might be required to be delivered by the taxpayer. Accordingly, in the example above, the taxpayer, if (as is further explained below) an affiliate or an officer, director or greater than 10% shareholder of the issuer of the shares, would be required to make certain regulatory filings required by the SEC (e.g., Form 144, Form 4, Schedule 13D/G) at the time the PPVF is entered into. A December 20, 1999 no-action letter issued by the SEC to Goldman Sachs effectively laid out the template for the SEC’s analysis for these filings. Significantly, however, for regulatory purposes, the date of sale is the date the PPVF is entered into; while for tax purposes, it is the settlement date, thus deferring taxes associated with selling.

As mentioned above, the counterparty to the PPVF (the investment bank writing the PPVF contract) often takes as collateral the stock of the taxpayer that is being hedged. A recent IRS Technical Advice Memorandum (“TAM”) indicates that execution of a PPVF coupled with simultaneous lending of the shares to the same counterparty will be treated as a taxable sale of the underlying securities. This particular ruling would bring tax law and securities law somewhat closer (at least in regard to the exact facts in question – PPVF coupled with simultaneous lending to same counterparty) because the 1999 no-action letter referred to above, if followed, also would allow the counterparty to have the securities “cleansed” – *i.e.*, restrictive legends removed and allow the securities to become freely tradable. The practical import of this is discussed further below in connection with the discussion of resales of “control” and “restricted” securities.

Policy Questions and Issues to Consider:

- Should the proceeds received from entering into PPVFs be treated as “loans” and subjected to the same margin requirements as traditional loans?
- Should the SEC change its position that PPVFs are treated as sales when the PPVF is entered into, thus allowing the securities that are the subject of the PPVF thereafter to be freely tradable?
- Given the IRS 2006 TAM, will the reference to “same” counterparty give rise to the use of off-shore entities that in fact are controlled by the counterparty in order to attempt to continue to use PPVFs to defer taxes but avoid the restrictions of the TAM?

***United States Federal Securities Law Issues***

The following highlights the securities law concepts and issues that most likely have arisen or will arise in the course of your investigation.

***Issues Arising Under The Securities Act of 1933***

### Purpose of the Securities Act of 1933

The purpose of the Securities Act of 1933 (the “Securities Act”) is to prevent the unregistered distribution of securities to the United States investing public by companies (issuers) and their affiliates. The purpose of registration is disclosure – investors acquiring securities in a public offering (a distribution) are afforded the protection of the Securities Act. That protection is the information that is required to be contained in a registration statement and prospectus and that sellers and underwriters of securities in distributions be subject to certain liabilities set forth in the Securities Act, most notably, sections 11 and 12.

From the framework of the Securities Act, we arrive at three types of offers and sales of securities – registered, exempt and illegal. The Securities Act is a transaction statute – every securities transaction must be registered unless there is an exemption in the statute for the transaction or the security itself is exempt.

The Securities Act registration exemption that allows most security holders to sell securities without registration is section 4(1), which covers “transactions by any person other than an issuer, underwriter, or dealer.” It is easiest to determine the availability of that exemption by first answering a preliminary question: are the securities proposed to be sold control securities or restricted securities?

### Control Securities

“Control” securities are securities owned by a person or entity that is an affiliate of the issuer. To understand the concept of control securities, it is helpful to look to Securities Act Rule 405, a definitional rule that defines “affiliate” and “control” as follows:

*Affiliate.* An “affiliate” of, or person “affiliated” with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

*Control.* The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

To fully understand the concept of “control,” however, one also must understand what the “power to direct or cause the direction of . . . management and policies” means. First, even unexercised ability to control is control. For example, if a shareholder owns sufficient stock in a corporation such that management is likely to be responsive to the shareholder’s requests or demands, the SEC would deem that shareholder to be an affiliate of the corporation. It is irrelevant that the shareholder pays no attention to the management of the corporation.

That then necessarily leads to the question of how much stock is enough to control a corporation. There is no fixed answer, but 10% equity ownership is a rule of thumb. Obviously, many shareholders who own that percentage of stock, or even a much greater percentage, are not

in control of a corporation. For example, a shareholder who owns a large minority interest may be excluded from power by a management that holds a majority interest. When a shareholder has a 10% interest, however, the SEC will probably consider the shareholder to be an affiliate, unless someone convinces the SEC otherwise.

Second, one must be familiar with the concept of a control group. Under this concept, a person is in control if he or she is a member of a group that controls. That theory applies to shareholders who may be considered part of a control group. A family is a classic example. Another would be one or more persons acting in concert with respect to the ownership or voting of the securities in question. The theory also is used to bring corporate officers and directors under the concept of "control."

#### Restricted Securities

"Restricted securities" is a simpler concept than "control securities." Rule 144(a)(3) defines "restricted securities" as:

- (i) Securities acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering;
- (ii) Securities acquired from the issuer that are subject to the resale limitations of Regulation D or Rule 701(c);
- (iii) Securities acquired in a transaction or chain of transactions meeting the requirements of Rule 144A;
- (iv) Securities acquired from the issuer in a transaction subject to the conditions of Regulation CE;
- (v) Equity securities of domestic issuers acquired in a transaction or chain of transactions subject to the conditions of Rule 901 or Rule 903 under Regulation S;
- (vi) Securities acquired in a transaction made under Rule 801 to the same extent and proportion that the securities held by the security holder of the class with respect to which the rights offering was made were as of the record date for the rights offering "restricted securities" within the meaning of this paragraph (a)(3); and
- (vii) Securities acquired in a transaction made under Rule 802 to the same extent and proportion that the securities that were tendered or exchanged in the exchange offer or business combination were "restricted securities" within the meaning of this paragraph (a)(3).

For the Subcommittee's purposes, I believe you need only be concerned with subsections (i) and (v). Subsection (i) relates to "Securities that are acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering." That part of the definition covers securities that: (1) at one point were sold

by the issuer under a section 4(2) nonpublic offering exemption (either in a statutory private placement or in a sale under Securities Act Rule 506) or a section 4(6) limited offering exemption; or (2) at one point were sold by an affiliate of the issuer in a private resale using the section 4(1) exemption. The current holder may have purchased the restricted securities directly from the issuer or an affiliate of the issuer, or there may have been a chain of transactions that separate the current holder from one of those sellers. When there is such a chain of transactions, each intervening sale must be a private resale that uses the section 4(1) exemption. Thus, the straightforward thrust of this part of the definition is that purchasers in transactions under section 4(2) or 4(6) buy restricted securities.

The fifth part of the definitions covers "Equity securities of domestic issuers acquired in a transaction or chain of transactions subject to the conditions of Rule 901 or Rule 903 under Regulation S." Regulation S is discussed below.

#### Regulation S Sales – Off-shore Sales and Resales

Regulation S is a series of rules (Securities Act Rules 901 through 905) adopted to provide an exemption from registration under the Securities Act for offerings and sales of securities occurring outside the U.S. The exemption was intended to help U.S. and foreign companies raise capital overseas quickly and inexpensively without having to comply with the registration process mandated under section 5 of the Securities Act. Regulation S provides two "safe harbors" from the Securities Act's registration requirements. One – the issuer safe harbor – is applicable to offers and sales by issuers, distributors and their respective affiliates. The second – the resale safe harbor – is applicable to resales by other parties. An offer, sale or resale of securities meeting all of the requirements of the applicable safe harbor is deemed to occur outside the U.S., and accordingly is not subject to the Securities Act's registration requirements.

In addition to other requirements, the availability of either safe harbor is subject to the satisfaction of two basic conditions (in addition to other requirements): first, the offer or sale of securities must take place in an "*offshore transaction*," meaning that (1) the offer is not made to a person in the U.S. and (2) the buyer is (or is reasonably believed by the seller to be) outside the U.S. at the time of the sale, or the sale is made through an established foreign securities exchange, or through the facilities of a designated foreign securities market, and the transaction is not pre-arranged with a U.S. buyer. Second, no "*directed selling efforts*" may be made within the U.S. in connection with the transaction. "Directed selling efforts" means any activity, with certain limited exceptions, undertaken for the purpose of, or that could be reasonably expected to result in, conditioning the U.S. market for the relevant securities

The issuer safe harbor is available to issuers, distributors, their respective affiliates and any person acting on behalf of any of these parties. The issuer safe harbor provisions classify securities into three categories for purposes of determining whether additional conditions must be met in order to qualify an offering as exempt from registration under the issuer safe harbor. The categories distinguish securities based upon (i) the issuer's jurisdiction of organization, (ii) the issuer's reporting status under the Securities Exchange Act of 1934, and (iii) the degree of "U.S. market interest" in the class of securities being offered or sold.



The resale safe harbor applies to resales by persons other than parties eligible to utilize the issuer safe harbor. Generally, to claim the resale harbor, these parties are required to comply with the "offshore transaction" and "no directed selling efforts" requirements discussed above. In addition, dealers are prohibited from knowingly selling Regulation S securities to U.S. purchasers during the applicable "distribution compliance period" (generally one year); when a purchaser is also a dealer, the selling dealer must notify the purchaser that the purchaser is subject to the same resale restrictions as the seller; and the selling concession or other fee payable when the offer or sale is made by certain affiliates is limited to a customary broker's commission.

With respect to stock issued by domestic public companies, during the first year following purchase, the securities are subject to Regulation S's distribution restrictions, and during the second year (and thereafter for purchasers affiliated with the issuer), the securities are subject to the volume and other resale restrictions under Rule 144. In addition, in connection with equity offerings by domestic public companies: each purchaser must certify that it will resell the shares (and engage in hedging transactions) only in compliance with the registration provisions of the Securities Act or exemptions therefrom, or in accordance with Regulation S; the issuer is required to legend the offered shares to give notice to subsequent buyers of the applicable resale restrictions; and the issuer is required to refuse to register any transfer of the shares unless it is made in accordance with the Securities Act's registration provisions, an exemption therefrom or Regulation S. These provisions are designed to prevent "flowback" of securities into the United States before they have "come to rest" outside the United States – *i.e.*, to prevent purportedly off-shore transactions from being used as devices to circumvent the Securities Act's limitation upon unregistered distributions in the United States.

#### Resales of Control Securities

As indicated above, Securities Act section 4(1) provides the exemption that allows most security holders to sell securities without registration. That exemption is available to any person that is not an "issuer, underwriter or dealer." Those terms are defined in section 2 of the Securities Act. For purposes of the Subcommittee, I believe that what is important to your investigation is who can be an "underwriter."

Securities Act section 2(a)(11) defines "underwriter" as "any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security." As it relates to an affiliate who holds securities that are control securities and not also restricted securities, there would be little problem if the definition stopped there. It does not, however. The last sentence of section 2(a)(11) adds: "As used in this [section 2(a)(11) – the definition of "underwriter"] the term 'issuer' shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer." In other words, the basic definition of "underwriter" should be treated as if it read: "The term 'underwriter' means any person who has purchased from an issuer or affiliates of the issuer with a view to, or offers or sells for an issuer or an affiliate of the issuer in connection with, the distribution of any security."

“Distribution” is not defined in the statute, but it is understood essentially to be synonymous with “public offering.” For example, in an early case the SEC established that a distribution comprises “the entire process by which in the course of a public offering a block of securities is dispersed and ultimately comes to rest in the hands of the investing public.” The concept of “coming to rest” involves the requirement of a holding period before restricted or control securities may be resold – evidence of one’s investment intent – *i.e.*, if you have purchased for investment rather *than with a view toward distribution*, you are not an “underwriter.”

Because of the way in which the term “underwriter” is defined, a securities firm that handles the sale of control securities in the public markets may be considered an underwriter. If it handles the sale as a dealer (as the term is used in the securities industry, that is, if it buys the securities itself with the idea of reselling them), it may be considered to have “purchased from an issuer [or an affiliate of the issuer] with a view to . . . distribution.” If it handles the transaction as a broker (that is, if it merely sells the securities for the affiliate), it may be considered to have offered or sold “for an issuer [or an affiliate of the issuer] in connection with . . . the distribution.” In either case, the series of transactions by which the securities pass from the affiliate to the public is considered to constitute one distribution that is partially “by” an underwriter. When that is the case, the section 4(1) exemption is not available, and the registration requirement of section 5 of the Securities Act is violated.

The problem for a securities firm purchasing from or selling on behalf of an affiliate of the issuer and becoming a statutory “underwriter” is significant – there is no exemption in the Securities Act available to underwriters in any circumstance. It may appear that securities would always have to be registered before an affiliate could sell them publicly, because it may seem that such a sale always would constitute a distribution. Considering the costs involved in preparing and filing a registration statement, that would mean that it would not be economically feasible for an affiliate to sell control securities except in a transaction involving at least some hundreds of thousands of dollars. That result is not what was contemplated by the drafters of the Securities Act, and the SEC has never taken that extreme position. Rather, as discussed below, the SEC has built some flexibility into the Securities Act through the concept of what constitutes a “distribution.”

As mentioned above, the SEC early on determined that a distribution comprises “the entire process by which in the course of a public offering a block of securities is dispersed and ultimately comes to rest in the hands of the investing public.” Notwithstanding the expansive nature of that concept, prior to the mid 1940s the SEC allowed affiliates publicly to sell unregistered control securities in limited circumstances. Various administrative actions of the SEC held no distribution to be involved when an affiliate sold control securities, on a stock exchange, in a transaction in which the selling broker limited its activities to the usual brokerage functions—and, most important, when the broker did not solicit any orders for the securities. Under that interpretation of “distribution,” affiliates had a ready market for their securities, as long as the amount of securities involved in a particular sale was small enough to be salable, at a reasonable price, without one or more securities firms’ soliciting buyers.

The SEC reversed course in 1946 in *In re Ira Haupt & Co.* In that case, affiliates sold during a five-and-one-half-month period of 1943, publicly, and through a broker, stock representing approximately 38% of their company's common stock. By its finding that the *Haupt* facts constituted a distribution, the SEC made it clear that, although it was willing to allow control securities to trickle into the market, it would not allow a flood. That decision made the securities firm that handled the sales an underwriter, which caused the section 4(1) exemption to be unavailable. The problem with *Haupt* was that its facts were too far from the ordinary sale of securities by an affiliate for the case to provide much guidance. Securities firms knew they would be underwriters if they replicated the facts of *Haupt*, but they did not know where the SEC would draw its line separating allowable transactions from distributions. Particularly troubling was the fact that the SEC, while failing to give guidelines, overruled the prior staff interpretations that had allowed at least small scale market sales by affiliates through brokers.

In 1954, when it adopted Rule 154, the SEC took definitive action on the questions left open in *Haupt*. That rule, which was later superseded by Rule 144, used the old SEC staff interpretations as a starting point and added a numbers test to determine the existence of a distribution. Under the rule, no distribution occurred when:

- (1) all sales were by a broker, who performed only ordinary brokers' functions and who received only the usual commission;
- (2) neither the broker, nor to the broker's knowledge the seller, solicited any orders;
- (3) the broker was not aware of circumstances indicating that the sales were part of a distribution; and
- (4) the amount of securities sold in six months did not exceed approximately one percent of the total outstanding securities of the same class.

That rule alleviated a good bit of the problem generated by *Haupt* and, as discussed below, its concepts were carried over into Rule 144 when it was promulgated in 1972.

#### Resales of Restricted Securities

Outside of Rule 144, there never has been a corollary to Rule 154 relating to the sale of restricted securities. Although Rule 144 is not the exclusive mechanism for resales of restricted securities purchased after its effective date, most practitioners would agree that selling restricted securities outside the rule rarely would be wise. This is particularly true with Rule 144's requirements having been gradually relaxed over the years. The most significant example of this relaxation is the reduction of the holding period for restricted securities from three years in the original rule to one year in the current version of the rule.

The holding period is perhaps the most important element of Rule 144 because it is thought that the length of the holding period is objective evidence of the holder's investment intent, or the lack thereof, at the time of original purchase. A purchaser's investment intent is

important because the opposite of investment intent is “view to distribution.” And, under section 2(a)(11), purchasing with a view to distribution makes the holder an “underwriter.”

Alternatively, a person who sells restricted securities too soon after their purchase may be considered an underwriter under the theory that the sale is “for an issuer in connection with [a] distribution.” The reasoning behind that conclusion starts with the idea that a distribution is not complete until the securities have come to rest in the hands of persons who are not “merely conduits for a wider distribution.” The argument may then proceed that:

- (1) the issuer knows or should know that some purchasers of restricted securities will want to resell fairly quickly after their purchase;
- (2) a purchaser is able to resell quickly only because the issuer does not take effective steps to prevent it (such as contractual provisions prohibiting the resale and legends on the certificates representing the securities); and
- (3) since the issuer is responsible for the resale, the resale will be measured as simply a part of a larger distribution of the securities by the issuer to the public through an underwriter.

Notice that from the point of view of the purchaser who last resold, the alternative theory is the more dangerous theory. Under the first theory, a purchaser may have a good chance of convincing a court that he or she did not purchase securities with a view to distribution, notwithstanding the shortness of the holding period. Under the second theory, however, the intent of the purchaser is irrelevant, as is the intent of the issuer.

Prior to passage of rule 144, the question was how long a holding period was required to avoid these problems. It is clear that no holding period removes the taint of underwriter status from someone who has purchased with a distribution in mind. In the usual situation, however, a sufficiently long holding period dispels any notion that a reseller of restricted securities is an underwriter, and two years came to be viewed by securities lawyers as the minimum safe holding period of restricted securities before a public sale. Before the passage of Rule 144, the SEC staff responded to a multitude of no-action letter requests in connection with potential resales of restricted securities. The staff freely granted no-action letters when restricted securities were held for three years, but was much less likely to do so in the case of a two-year holding period.

#### Public Resales Under Rule 144

As indicated by the title of Rule 144, “Persons Deemed Not to Be Engaged in a Distribution and Therefore Not Underwriters,” the rule is designed to provide a mechanism for avoiding underwriter status. The rule applies in two instances:

- to any affiliate or other person selling restricted securities of an issuer for his own account, or

- to any person who sells restricted or any other securities for the account of an affiliate of the issuer of such securities.

Assuming the rule's other requirements (*e.g.*, current public information, volume limitations, manner of sale and filing) are met, sales by these persons shall be deemed not to be a distribution of such securities and therefore the person selling shall not be an "underwriter."

Referring back to the discussion of "control" and "restricted" securities set forth above, and the theories by which sellers and brokers may be tainted with underwriter status, makes Rule 144 decipherable. The first instance covers restricted securities by any person and the second clause relates to control securities. Notice that the focus in the first instance is on the holder of securities, while in the second it is on the person who sells securities for the holder. That, of course, is consistent with the earlier discussion of how the taint of underwriter status arises differently in the case of restricted and control securities.

#### Securities Act Liabilities

Since many, if not all, of the transactions under investigation involve purportedly exempt transactions as opposed to registered offerings, I would be remiss if I failed to mention an anomaly resulting from the U.S. Supreme Court's decision in *Gustafson v. Alloyd Co., Inc.* The principal liabilities for violations of the Securities Act are set forth in section 11 and section 12. Section 11 involves liability for false or misleading registration statements and, therefore, is not applicable to exempt (non-registered) offerings of securities.

Section 12(a)(2), however, provides a cause of action for a false or misleading "prospectus." The *Gustafson* Court interpreted "prospectus" as meaning a prospectus in a registered offering despite the expansive definition of "prospectus" in the Securities Act that includes many types of securities offering documents. Lower courts quickly followed the *Gustafson* decision and ruled that section 12(a)(2) gave no private cause of action to one who purchased securities in a private (non-registered) transaction; *i.e.*, a "private placement." As a result, there is no effective Securities Act remedy for a purchaser of securities in a non-registered offering. That simply could not have been the Congressional intent and deserves study on Congress' part to consider overruling the *Gustafson* decision.

#### Policy Questions and issues to Consider

- Should Regulation S dealing with off-shore transactions be further amended to require additional disclosure or due diligence with respect to the off-shore entities to which securities are sold and additional restrictions with respect to "flowback" into the United States markets?
- Should Congress address the lack of an effective Securities Act remedy for fraud in connection with private transactions that resulted from the Supreme Court's *Gustafson* decision?

#### ***Issues Arising Under The Securities Exchange Act of 1934***

The Securities Exchange Act of 1934 (the “Exchange Act”) is more expansive in its coverage than the Securities Act. The Exchange Act, among other things, regulates trading markets and also prescribes information that is required to be filed by companies after they become public. It also requires disclosures by persons acquiring significant holdings in United States public companies as well as by the officers and directors of those companies.

#### Williams Act

Certain provisions relating to beneficial ownership reporting and tender offer regulation, also known as the Williams Act, were passed in response to certain tender offer and related practices that Congress in the 1960s deemed abusive. The Williams Act added to the Exchange Act sections 13(d), 13(e), 14(d), 14(e), and 14(f). Section 14 is of little interest to the issues being studied by the Subcommittee as they relate almost exclusively to regulation of tender offers.

Section 13(d) is aimed at tender offers only indirectly. It requires a person who owns beneficially more than 5% of a class of equity security registered under the Exchange Act, within ten days after the acquisition of securities that triggers the reporting requirement, to provide certain information to the issuer, to the SEC, and to each exchange on which the security is traded. The section contains a list of such information, but it also gives the SEC the power to add to or subtract from the list. Exchange Act Regulation 13D-G is the SEC’s response, and it details the disclosure requirements. The resulting disclosure document, Schedule 13D, is designed basically to give management of the issuer information concerning potential tender offerors. That information includes the number of shares beneficially owned by the reporting person, the source of funds used to purchase the shares, and, if the purpose of the purchase of shares is to acquire control of the issuer, any plans of the reporting person to liquidate the issuer, to sell its assets, to engage it in a merger, or to effect any other major change in its structure. Under section 13(d), amendments to that schedule must be filed upon the occurrence of material changes in the disclosed information.

The other Williams Act provision, section 13(e), gives the SEC the power to regulate repurchases by issuers of their own equity securities. The SEC has done this by extensive rulemaking in the areas of “issuer tender offers” and “going private” transactions, including the requirement to file, in specified circumstances, Schedule 13E-3 and schedule TO, which require substantially more disclosure than schedule 13D.

The key to the Section 13 reporting obligations is the determination of “beneficial ownership.” Much like the “affiliate” concept under the Securities Act, the Exchange Act recognizes “control groups,” each member of which is deemed the beneficial owner of the group’s securities. I also draw the Subcommittee’s attention in particular to SEC Rule 13d-3, which, in part, provides as follows:

**§240.13d-3 Determination of beneficial owner.**

- (a) For the purposes of sections 13(d) and 13(g) of the Act a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:
  - (1) Voting power which includes the power to vote, or to direct the voting of, such security; and/or,
  - (2) Investment power which includes the power to dispose, or to direct the disposition of, such security.
- (b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of section 13(d) or (g) of the Act shall be deemed for purposes of such sections to be the beneficial owner of such security.

#### Securities Exchange Act – Section 16

Exchange Act section 16 was an original section of the Exchange Act that, like many we have seen, was directed at unscrupulous practices discovered by the U.S. Senate while investigating the causes of the 1929 stock market crash:

Among the most vicious practices unearthed at the hearings before the subcommittee was the flagrant betrayal of their fiduciary duties by directors and officers of corporations who used their positions of trust and the confidential information which came to them in such positions to aid them in their market activities. Closely allied to this type of abuse was the unscrupulous employment of inside information by large stockholders who, while not directors and officers, exercised sufficient control over the destinies of their companies to enable them to acquire and profit by information not available to others.

Accordingly, Congress added section 16 to the Exchange Act as a means to minimize the unfair use of inside information. Here, it is worth noting that the use of inside information also is regulated by Exchange Act section 10(b) and Rule 10b-5. The two provisions, however, are entirely different in their coverage and operation. Rule 10b-5 is a fairly refined weapon aimed at discrete acts of wrongdoing. Section 16, on the other hand, is a loaded gun that can hit the innocent as easily as the guilty. Section 16(b) operates without consideration as to whether an insider actually was aware of material nonpublic information. Under that section, “profit” made by insiders from transactions involving equity securities of publicly held companies, when a “purchase” and a “sale” (in any order) are made less than six months apart, must be disgorged and paid over to the issuer.

In addition to the liability provision mentioned above, section 16 also has a *reporting* provision. Accordingly, before examining section 16(b), it is helpful to discuss section 16(a).

That section requires, in addition to directors and executive officers, beneficial owners of more than 10% of any class of equity security that is registered under the Exchange Act to file reports with the SEC and relevant securities exchanges concerning their holdings of all equity securities of such issuers.

In determining who is a *beneficial owner* for purposes of section 16, the SEC's regulations provide, in relevant part, that:

Solely for purposes of determining whether a person is a beneficial owner of more than ten percent of any class of equity securities registered pursuant to section 12 of the Act, the term "beneficial owner" shall mean any person who is deemed a beneficial owner pursuant to section 13(d) of the Act and the rules thereunder; *provided, however*, that [certain] institutions or persons shall not be deemed the beneficial owner of securities of such class held for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business (or in the case of [certain] employee benefit plan[s], of securities of such class allocated to plan participants where participants have voting power) as long as such shares are acquired by such institutions or persons without the purpose or effect of changing or influencing control of the issuer or engaging in any arrangement subject to Rule 13d-3(b) (§240.13d-3(b)):

The cross reference to section 13(d) and Rule 13d-3(b) brings the "use of trusts to circumvent reporting" concept into section 16 and subjects persons engaging in such conduct to the reporting and possible draconian sanctions of Section 16.

#### Closing

I hope that the foregoing overview of these important and sometimes difficult securities law concepts is helpful to the Subcommittee in its investigation and in understanding how the use of off-shore entities, by company affiliates or otherwise, can be used in ways that circumvent the spirit, if not the letter of the United States securities laws.

With that, let me finish as I began, with the concepts of full disclosure and trust. It is reported that one out of every two adult Americans have invested in the U.S. capital markets that are the crown jewel of our economy. They have done so because they had trust and confidence in a system that provides the information investors need to make wise investment decisions. As we all know from the long history of securities regulation, however, you can't legislate trust. Whatever the detail of the law or regulation, persons will look for ways to circumvent or will simply violate the law. You, however, can ensure that the laws and regulations require complete disclosure and that the penalties for betraying the trust reposed by the investing public are severe and certain.

Thank you again, Mr. Chairman. This Subcommittee has a great tradition. I am quite honored to appear before and to share my thoughts with you.

I would be happy to respond to any questions.



STATEMENT OF HAIM SABAN  
BEFORE THE  
UNITED STATES SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
AUGUST 1, 2006

Good morning, Mr. Chairman, Senator Levin, and Members of the Subcommittee. I understand that the Subcommittee's focus this morning is on "the role of professional firms and advisors" with regard to certain tax-related transactions. Thank you for the invitation to testify regarding my own experience with the promoters and developers of a 2001 transaction that you have referred to as the "POINT" transaction. To the extent that my testimony can, in some way, assist you in strengthening and improving public policy in this area, I am pleased to be able to do so.

You asked that I be prepared to address a number of specific questions regarding the "POINT" transaction. First, I would like to briefly give you some background on how and to what extent I came to be involved with this transaction and then I will be happy to address specific questions that you may have.

Since my arrival in this country in 1983, I have been fortunate in countless ways, both in my personal life and in business, where I have had the benefit of some very successful investment opportunities. In 2001, I found myself in a situation where it seemed likely that I would be receiving a significant amount of income from the anticipated sale of one such investment, Fox Family Worldwide. I did what many individuals would have done in similar circumstances: I consulted my longtime trusted tax and legal advisor, who had worked for me for fifteen years, and asked that he explore tax planning possibilities regarding the expected income. After several months, my advisor, accompanied by an individual from Quellos, came to me with what appeared to be a very complicated proposal for tax deferral. It involved numerous steps and entities. I did not understand the structure of the transaction. My advisor assured me that the transaction was legal and would be backed up by a legal opinion from a reputable law firm. I am neither a lawyer nor a tax expert, in fact my formal education ended when I finished high school. As a result, I relied on those assurances and left the structure and details of the transaction to others whom I believed were acting in good faith and with the benefit of considerable experience and familiarity with tax planning.

Long after the transaction was concluded, I learned that I had been poorly advised in 2001 and that there were significant problems with the assurances that I received at the time. I was quite upset, to say the least. I am now in the process of arranging with the IRS and state authorities to pay all of the taxes that I had been told would be legitimately "deferred" by the transaction, as well as interest and substantial penalties. In short, I am trying to put this entire unfortunate incident behind me.

Again, I appreciate the opportunity to share my experience with you and would be happy to answer your questions.

**WRITTEN STATEMENT OF  
MICHAEL C. FRENCH  
TO THE SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
AUGUST 1, 2006**

Mr. Chairman Coleman, Ranking Member Levin and Members of the Subcommittee.

I would like to begin by thanking the Subcommittee staff for their courtesy and professionalism in connection with this matter. In particular I would like to thank Messrs Bob Roach and Mark Nelson.

My name is Michael C. French and I reside in Dallas, Texas. I am the retired Chairman of the Board of Scottish Re Group Ltd., a life reinsurance company that I founded and took public in 1998. Listed on the New York Stock Exchange, it has become one of the largest life reinsurance companies in North America. I practiced law in Dallas from 1970 to 1992 with the firm of Jackson Walker, focused primarily on corporate transactions. Some of my largest clients in the law practice were companies in which the Wyly family in Dallas had interests.

At the end of 1992, I left the active practice of law and formed a relationship with the Wyly family in Dallas, joining several of their companies as a director and consultant. I was also very active in the establishment in 1993 of Maverick Capital--an investment management business sponsored by the family--and remained active in that business. By 2000 Maverick had grown to have over \$7 billion under management. I severed my relationship with the Wyly family and sold my interest in Maverick in late 2000.

It is important to note that in testifying today I am constrained by several factors. First, I have been instructed by the Wyllys' counsel that they

consider me to have been providing legal services to them during the period from 1993 to 2000, and further instructing me not to disclose any privileged attorney-client communications or attorney work product. I am also limited in that I severed my ties with the Wyly family and their companies six or more years ago and have very little knowledge of their activities since that time. For that matter, a substantial portion of my time for the three years prior to separating from the Wyly family was spent in building and operating Scottish Re on a full-time basis. In addition, my separation from the Wyly family was not entirely cordial, and under the terms of a settlement agreement I was required to return to them or destroy any documents I had relating to their affairs. Lastly, I am not an expert on tax issues related to foreign trusts and have never practiced law in that area, although I was exposed over the years to the advice of a number of attorneys who did.

In addition to my other activities, I served as a Protector of various Wyly family trusts in the Isle of Man from 1992 until late 2000. Both the Wyly family and I received advice from various lawyers and law firms regarding the establishment, structure and operation of those trusts. To the extent that advice related to me individually, as opposed to me as a representative of the Wyly family, I am able to discuss it and am not constrained by their attorney's instructions regarding their attorney client privileges. In that regard, I was a beneficiary of an Isle of Man trust similar to some of the Wyly trusts. While I believed, based on legal advice to me, that the trust was a legally effective mechanism, I became concerned that it was too aggressive in light of new IRS pronouncements. Therefore, I unwound the deferral mechanism in February 2001 and had the trust domesticated to the United States at the end of 2002. With that, I will be pleased to try and answer your questions.

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**Statement  
Of  
Jeffrey I. Greenstein,  
Chief Executive Officer  
of the  
Quellos Group, LLC**

**Before the Permanent Subcommittee on Investigations of the  
Senate Committee on Homeland Security and Governmental Affairs**

**August 1, 2006**

Chairman Coleman, Senator Levin, and Members of the Subcommittee:

My name is Jeff Greenstein, I am the chief executive officer of the Quellos Group, LLC, and am appearing here voluntarily.

Quellos is an investment management firm founded in 1994 and headquartered in Seattle, Washington. Globally, we employ 270 people and manage more than \$15 billion in assets for financial institutions, private and government employee pension plans, university and other endowments, foundations and private clients, through both onshore and offshore investment funds.

For several months, Quellos has cooperated with the staff of this Subcommittee during its review of a tax-advantaged strategy called POINT. Quellos employees voluntarily participated in interviews, and we provided tens of thousands of pages of documents to the staff. Yesterday, the staff of this Subcommittee issued its report. We believe the report is unfair, one-sided, and inaccurate. I apologize in advance if I seem frustrated, but from my position, and I am neither a lawyer nor a tax expert, the Report seems to have glossed over or omitted several basic facts.

Unfortunately, I do not have the time in my opening statement to address all the mistakes and errors in the report. In my limited time, I want to describe briefly the POINT transaction and then highlight some of the more fundamental errors.

Six POINT transactions were executed 5-6 years ago by Quellos Custom Strategies, a small and now dormant subsidiary of the firm. The transaction combined a popular

investment strategy with a tax strategy frequently executed in the United States by major investment banks.

This Committee should be aware of certain fundamental facts about POINT.

- The handful of POINT transactions were all executed in 2000 or 2001.
- These few transactions were executed based upon extensive consultations with leading tax lawyers, several of whom gave tax opinions approving the transactions.
- Each transaction had substantial opportunity for economic profit, and, indeed, the report acknowledges that millions of dollars in gross trading profits were earned in several of the transactions.
- Every client consulted his or her own professional advisors regarding the strategy – in fact, several including Messrs. Saban and Johnson, directed us to communicate with their chosen advisors, upon whom they were relying.
- From the outset, we told the government about POINT by registering it with the IRS.

Let me now address several glaring problems with the staff report.

First, the report indicates inaccurately that the POINT transaction is a “black box” that Quellos and others sought to hide from the U.S. Government. Nothing could be further from the truth. Almost six years ago, we registered the POINT transaction with the IRS as a tax shelter. We maintained and shared with the IRS information required by its disclosure regulations. As a result, the IRS is reviewing these transactions. Thus, as opposed to being a “black box,” POINT was disclosed by us to the federal government early on.

Second, the report suggests that the POINT transaction did not offer an opportunity for a profit. In fact, POINT gave investors the potential either to earn profits or incur losses based solely on market fluctuations. For the report to suggest otherwise is flat wrong.

Third, the report erroneously characterizes book entry transactions as “fake.” But every day, trillions of dollars of securities, commodities and treasury obligations are traded on a book entry basis. Over-the-counter derivative and swap transactions, which involve trillions of dollars, are simply contracts that obligate parties to pay certain amounts based on market movements in the underlying security or commodity involved. Because we believed these were real portfolios with real opportunities for profit and loss, we – and the clients or their advisors – closely followed these portfolios.

Fourth, the report criticizes our involvement with offshore entities. However, we worked with and relied on the European American Investment Group on POINT because of the reputation and broad experience of its principals in the over-the-counter markets. Euram assured us about its ability to establish the portfolios; Euram, not us, selected the offshore entities, Barnville and Jackstones, and Euram, not us, vouched for the ability of those entities to engage in the transactions. In every case, Barnville and Jackstones satisfied their financial obligations to the partnerships, including the payment of millions of dollars and the delivery of shares of stock when requested.

Fifth, contrary to the report, clients who invested in POINT had their own professional advisors review this transaction and participate in its structuring and

execution. As a result of this involvement, the six different transactions had significant differences.

Quellos is a well-regarded investment advisor. It has not implemented POINT or any similar transaction since 2001. Quellos has established an independently advised transaction review committee to review transactions with tax aspects. We take these issues and our reputation seriously. I hope these remarks have put these matters in better perspective.

Mr. Chairman and Senator Levin, thank you again for giving Quellos the opportunity to speak here today.



*Prepared Statement of Michael G. Conn Delivered to the United States Senate  
Permanent Subcommittee on Investigations of the Committee on Homeland  
Security and Governmental Affairs on August 1, 2006*

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Chairman Coleman, Ranking Member Levin, and Members of the Subcommittee, I appreciate the invitation to appear before the Permanent Subcommittee on Investigations to discuss certain domestic brokerage accounts maintained by offshore Private Investment Companies ("PICs") that are the subject of questions in this Subcommittee's letter addressed to Bank of America. In this testimony, I intend to discuss these accounts and the changes we have made in response to issues identified by our review of our conduct with respect to these accounts. As you know, we have worked closely with this Subcommittee over the past year to further your investigation and to share our ongoing actions in response to this issue.

Let me first introduce myself. My name is Michael G. Conn and I am a Regional President of the Private Bank of Bank of America. My responsibilities include oversight of the northwest region of the Private Bank, which involves managing Private Bank associates in five states. I previously sat on the Board of Directors of Banc of America Investment Services, Inc. ("BAI"). I have spent over 26 years in the brokerage business, first at Morgan Stanley Dean Witter and then with Bank of America and have been in private banking for four years.

I would like to begin by underscoring that Bank of America takes very seriously its regulatory obligations to know its customers, report suspicious

activity and assist law enforcement and its regulators in the fight against money laundering, drug trafficking, terrorist financing, fraud and other illegal activity. Indeed, Bank of America has long been recognized as a leader in the industry in cooperating with law enforcement, having earned many commendations from various law enforcement agencies. Bank of America is the largest single filer of Currency Transaction Reports, which are reports designed to assist law enforcement in uncovering financial crimes. We have approximately 500 full-time associates dedicated to anti-money laundering (“AML”) efforts across Bank of America and have devoted close to \$60 million to AML technology over the last several years. We have recently hired the former Director of FinCEN as our Senior Compliance Executive for Financial Crimes and the former Director of the American Bankers Association Center for Regulatory Compliance as our AML Strategy Executive. We require AML training for all Bank of America associates. We are committed to continually improving our systems and processes as technology advances, as the environment in which we operate evolves, and as financial crimes become more sophisticated. We believe that Bank of America’s commitment to cooperating with regulatory and law enforcement authorities is further demonstrated by our full cooperation with the Subcommittee staff and the Bank’s implementation of remedial measures.

The Bank fully recognizes that its delay in demanding beneficial ownership information from the customers of the brokerage accounts that are the subject of our testimony was inconsistent with the Bank’s commitment to

knowing its customers. As we will explain in further detail, there are a number of factors that explain, but do not excuse, the delay in demanding such information from the customers. Upon review of the underlying facts of this matter, senior management instructed Bank personnel to demand that the customers provide the beneficial ownership information, ordered that the accounts be closed when the customers refused to provide the information and directed that significant remedial action be taken. In addition, as we detail later in the statement, we have made significant changes and enhancements to our policies and procedures as a result of our review.

#### **History and Nature of Wyly Relationship**

The Subcommittee has asked us to testify regarding the Bank's relationship with Sam and Charles Wyly. Charles and Sam Wyly, both well-known businessmen and philanthropists in the Dallas community, began a relationship with Bank of America's Private Bank in 1994. Over time, the Wyly brothers and their families maintained several types of domestic accounts at Bank of America, including checking and savings accounts for individual family members and family trusts and certain partnerships established by Wyly family members; brokerage accounts for individual family members and trusts; lines of credit; credit and debit cards; and mortgages.

**Offshore Entities**

The brokerage accounts in question that were held by Bank of America were domestic accounts that were transferred from another financial institution to Banc of America Securities LLC (“BAS”) in February 2002 when BAS hired the broker who had previously served as the broker for these accounts. We understand that although the broker did not know the specific beneficial owner of each of the PICs that maintained accounts, he believed, based on his longstanding relationship with the Wyllys and their representatives and conversations he had had with them over the years, that the PICs were owned by trusts that were established and endowed by Charles and Sam Wyly for the benefit of Wyly family members or charitable organizations.

In connection with the transfer of the PIC accounts to BAS in 2002, BAS personnel performed due diligence and obtained certain Know Your Customer (“KYC”) information from the PICs. BAS Compliance collected account opening documentation such as original articles of incorporation, corporate resolutions, W-8 forms, and authorized signatory lists. BAS Compliance also performed background checks on the signatories of the accounts. In early 2002, when these accounts were transferred to BAS, the Bank’s policies were less stringent than they are today and did not always require that beneficial ownership information be obtained in order to open an account for a PIC. In this case, the Bank did not obtain such information at account opening as we would today.

In August 2003, the PIC accounts were moved from BAS (which focuses on institutional customers) to BAI (the retail brokerage arm of Bank of America) as part of a wholesale move of all retail accounts from BAS to BAI. In early 2004, in the course of reviewing certain activity in the PIC accounts, National Financial Services (“NFS”), BAI’s clearing firm, asked BAI compliance personnel for certain information, including beneficial owner information, concerning a handful of the PIC accounts. BAI and NFS work cooperatively to analyze activity in BAI accounts and to identify and investigate potential compliance issues. These inquiries led to an ongoing dialogue among numerous BAI associates, BAI in-house lawyers and compliance personnel and NFS. The BAI broker for the accounts, along with the customers’ representative, explained that these offshore customers were PICs, owned by trusts created by Charles and Sam Wyly, and the beneficiaries of those trusts were Wyly family members, as well as charitable institutions.

The brokerage accounts contained principally cash, fixed income investments or Michaels Stores’ stock. There was minimal trading in the accounts. We understand that NFS periodically expressed concern about money movements among the brokerage accounts and the possibility that the stock in the accounts was insider stock given the large concentration in the stock of Michaels Stores, Inc., of which Charles Wyly was the Chairman of the Board and Sam Wyly was the Vice-Chairman. From BAI’s perspective at the time, however, the focus of NFS’s inquiries was on beneficial ownership information. As a result,

BAI personnel concentrated on the beneficial ownership question raised by NFS and few within BAI were aware that there was any concern raised about account activity or stock affiliation or control.

The dialogue regarding these accounts continued between NFS and BAI for many months, as various alternative proposals for obtaining the beneficial ownership information were considered. The customers, through their representatives, maintained that the beneficial ownership information was not required as a matter of law, even if it was required by BAI's policies, and that other financial institutions did not insist upon obtaining such information. The customers explained that their reluctance to provide the information was motivated by confidentiality and asset protection considerations.

A protracted discussion and internal analysis as to whether BAI would grant an exception to its policies ensued. BAI ultimately decided to require the customers to provide specific beneficial ownership information for the PIC accounts. BAI and NFS agreed upon a detailed list of specific questions to give to the customers requiring beneficial ownership information and other information about the accounts. Shortly thereafter, the Bank received governmental inquiries relating to these accounts. At that time, senior management for the Bank became involved and demanded that the customers immediately provide beneficial ownership information. When the PICs did not provide the information, BAI promptly closed the accounts for these PICs and the Bank terminated its broader private banking relationship with the Wyllys.

We recognize that, with the benefit of hindsight, it is difficult to understand why the resolution of these issues took months. In order to put the delay into context, there are several important factors to consider. First, because of the Private Bank's longstanding relationship with the Wylys and their established reputation in the Dallas community and nationally as successful business persons and philanthropists, BAI associates had a good faith belief that the accounts were not being used for money laundering or other illegal activity. As a result, unlike in cases in which the Bank suspects that the customer may be engaged in illegal activity, here, BAI personnel did not see a critical need to bring the issues to immediate resolution. Second, as is discussed above, there were extensive discussions with the customers and their representatives as to whether the Bank was legally required to obtain the information. The BAI broker for the accounts maintained that other financial institutions did not require such information. The Bank, in response, maintained that whether the beneficial ownership information was technically required as a matter of law was irrelevant, because the Bank's policies and best practices required it. Bank of America recognizes that it spent far too long discussing the issue with the customers and addressing their concerns, and that it did not act as swiftly or as decisively as it should have in forcing disclosure or closing the accounts, as we ultimately did.

Following a review of this matter, the Bank took immediate steps to ensure that appropriate remedial measures were implemented. In addition to closing the accounts, the Bank took disciplinary and other personnel action with

respect to employees who were involved in discussions relating to these accounts and failed to demand that the customers immediately provide the beneficial ownership information. Moreover, the Bank has improved its compliance structure and processes in several ways, including increasing the number of BAI surveillance officers responsible for monitoring activity and conducting inquiries. The Bank has made a concerted effort to improve lines of communication between NFS and BAI to ensure a more timely response to compliance issues raised by NFS and to facilitate oversight and follow-up of such issues within BAI. The Bank has improved training for associates to assist them in identifying PIC accounts and obtaining the necessary Know Your Customer information. In addition, the Bank has enhanced account opening, due diligence and closure procedures. With regard to account closures, Bank of America has a project underway to ensure oversight, accountability and follow-up concerning the account closure process. Finally, the Bank accelerated its internal review and audit of accounts to ensure that they were compliant with the Bank's Know Your Customer policies.

In conclusion, I wish to thank the Chairman, Senator Levin and the other Members of the Subcommittee for this opportunity to allow us to explain our role in this issue. Bank of America recognizes the seriousness of the Bank Secrecy Act and the Patriot Act and is committing the full resources necessary to meet these requirements. As a result of what Bank of America has learned through its investigation of these accounts, the Bank has enhanced its policies and practices in this important area. The Bank looks forward to continuing its partnership with regulators and law enforcement in the global fight against money laundering and other illegal activity.



**Written Statement of George T. Wendler**  
**Senior Executive Vice President, Chief Credit Officer**  
**HSBC Bank USA, N.A.**  
**Before the Senate Permanent Subcommittee on Investigations**  
**August 1, 2006**

Mr. Chairman, Ranking Member Levin and other Members of the Subcommittee, my name is George T. Wendler. I am Senior Executive Vice President and Chief Credit Officer for HSBC Bank USA, N.A.. Thank you for the opportunity to appear before you today.

HSBC is committed to ensuring that it operates its business in full compliance with applicable laws and regulations, and in accordance with best practices to limit the risk of Bank involvement in tax-related transactions that are abusive. HSBC is also committed to ongoing review and improvement of client intake and credit approval processes, not only to maintain compliance with changing laws and regulations, but also to protect and promote the Bank's reputation and values.

I am here today first and foremost to answer the Subcommittee's questions about the bridge loan and derivative services HSBC provided to two Quellos-advised clients between 2000 and 2002. Bank personnel have only recently learned of Quellos' use of the phrase "POINT strategy" to describe a series of transactions that included our bridge loan and derivative collar services.

I will also describe briefly the changes in law and HSBC policies that have occurred since the transactions occurred. Because of these changes, HSBC would not provide support for the Quellos-advised POINT transactions if presented with them today.

I was Chief Credit Officer of HSBC Bank USA, N.A. between 2000 and 2002, and serve in that role today. I trust the Subcommittee will understand that my business expertise is in credit matters and not in compliance or "know your customer" matters. As a result, some of the information for my testimony was provided to me by Bank personnel who have greater knowledge than me, particularly with respect to non-credit related matters. Having said that, I will do my best to answer all of your questions.

**HSBC's Role in the Transactions**

Let me turn first to HSBC's limited role in this matter, as I understand it from my own perspective and discussions with others.

HSBC's Domestic Private Bank was approached by the Quellos Group in the Fall of 2000 to make a competitive bid on a bridge loan and derivative "collar" for a high net worth Quellos client. The Private Bank was told that the client needed short term financing to make an investment, pursuant to a series of Quellos-advised transactions. The Private Bank was told that the bridge loan would be repaid from the proceeds of the client's sale of stock in a corporation in which the client owned a large block of stock. The Private Bank was told that the derivative "collar" was needed to implement the client's investment strategy. The size of the bridge loan was approximately \$50 million and the "collar" derivative was designed for a stock portfolio initially valued at about \$55.8 million.

During the course of negotiations for the loan and “collar,” the Private Bank learned that some of the Quellos-advised transactions involved acquisitions of LLC interests and technology stocks from Isle of Man companies, and that a potential benefit would include tax deferral as well as an investment gain opportunity. Consistent with HSBC policies at the time, the Private Bank took steps to determine that the Bank’s transactions with the client would be adequately collateralized, were highly likely to be repaid, and were being entered into with reputable individuals and entities. This included personal meetings with the client and consultations with a number of other involved entities. The Bank also insisted that the flow of funds and stocks take place in cash and custody accounts established and monitored by HSBC; that the Bank’s counsel be permitted to review a tax opinion from a leading U.S. law firm before the transactions were executed; that there be clear written acknowledgment by the client that it was not relying on tax or investment advice from HSBC; and that the client had obtained such advice separately. HSBC also took steps to determine that the Bank itself had no “tax shelter registration” or other tax reporting obligations relating to the transactions. The Bank acquired documentation from the specific Isle of Man entities to open transaction execution accounts, and we understood them to be affiliated with an Austrian Bank known as EURAM, but we have been unable to find contemporaneous “Know Your Customer” (“KYC”) forms for the accounts.

The Private Bank competitively bid on and entered into a similar set of transactions with a second Quellos-advised client in 2001, and provided an additional “collar” to the first Quellos client in 2002. The 2001 transactions were significantly larger than those executed in 2000, involving a loan of about \$807 million and a collared stock portfolio of a similar size. The 2002 “collar” was designed for a portfolio valued at approximately \$60 million. The Bank’s diligence efforts in connection with the 2001 transactions were the most extensive due to the large size of the loan, and included a meeting with EURAM officials, who told a senior Bank official at the time that EURAM was the beneficial owner of the Isle of Man entities involved in the transactions. EURAM’s affiliation with the Isle of Man entities is reflected in our credit files for the transactions.

#### **HSBC Safeguards Against Involvement With Abusive Tax Shelters Today**

We believe our involvement, level of review, and diligence with respect to these transactions was lawful and consistent with general industry standards at the time. While we are confident that the Bank complied fully with its legal obligations, I want to emphasize that, for any similar proposal today, the Bank would take significant additional steps.

This is in part because the law has changed. For example, large loss transactions now require additional IRS reports; and bank regulators have proposed new guidelines relating to complex structured finance activities. In addition, HSBC’s prudential requirements for diligence, lending and structuring services are significantly different today.

Our current credit approval process for a large transaction is preceded by the business area’s review of a variety of factors, including “know your customer” issues, business purpose of the transaction being financed, loan terms and conditions, and additional review of tax and accounting issues associated with a structured transaction, if relevant. The business area would also assess the suitability of the loan for both the borrower and the Bank. If the business area wishes to proceed, it will submit a Credit Approval Risk Management form or “CARM” to the Bank’s credit approval unit. There may also be preliminary consultations to determine whether

the credit approval unit has issues or can provide an indication of interest before business area diligence is complete. There are different levels of approval based on loan size.

The credit approval process addresses risk, and reward given the level of risk. Credit approval assumes that non-credit issues have been covered or will be covered as a condition of closing. The business area is responsible both for covering these issues and for documenting their coverage.

As to "know your customer" and anti-money-laundering procedures, the Bank has benefited greatly from program enhancements and processes implemented as the result of a 2003 Written Agreement with our regulators. An affiliate merger and change to a National Charter in 2004 gave rise to an "enforceable condition" to merger approval that the Bank comply with the 2003 Written Agreement. I am pleased to report that, by letter dated February 6, 2006, after conducting extensive examinations, the Office of the Comptroller of the Currency determined that the Bank had fully satisfied the terms of the 2003 Written Agreement. The 2003 Written Agreement itself required significant enhancements in HSBC's anti-money-laundering programs, including with respect to customer due diligence, the detection and reporting of suspicious activity, and the implementation of a program for the testing of compliance with procedures.

#### **Looking Back But Focusing Forward**

In retrospect, there were a few warning signs about these transactions. We were aware that these were transactions with significant tax benefits, and that offshore corporations were involved. Our lawyers were allowed to review an outside tax opinion, but were not allowed to keep a copy for the Bank's records. Our principal focus was on the clients and their ability to meet their financial obligations to the Bank. We did not probe extensively on whether the facts would support the clients' tax positions, because the clients were obtaining their own advice and making their own judgments. Today, we would probe and review those facts more extensively before making financing decisions.

HSBC's standards today are well summarized in a letter that our Private Bank's CEO for the Americas circulated to Private Bank managers in late December 2005:

No customer or business arrangement is worth our reputation. Knowing our customers makes good business sense and helps us preserve our reputation for integrity and fair dealing....This responsibility cannot be delegated or abdicated and should never be taken lightly.

Today's hearing confirms the wisdom of those standards, which we do our best to meet in all our business dealings.

Finally, I would like to express the appreciation of my colleagues at the Bank for the professionalism and courtesy extended by the Subcommittee's staff. Again, thank you for the opportunity to appear today. I hope my testimony has been of assistance, and I will be pleased to answer any questions.

STATEMENT OF CHARLES W. BLAU  
ON BEHALF OF  
MEADOWS, OWENS, COLLIER, REED, COUSINS & BLAU, L.L.P.  
TO THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
OF THE COMMITTEE ON HOMELAND  
SECURITY AND GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

August 1, 2006

Chairman Coleman, Ranking Member Levin, and members of the Subcommittee, my name is Charles W. Blau. I am a partner in the Dallas law firm of Meadows, Owens, Collier, Reed, Cousins & Blau, L.L.P. ("Firm" or "Meadows Owens"). By agreement with the Subcommittee, I am appearing today as the designated representative of Meadows Owens. I am pleased to submit this written statement in response to certain specific inquiries addressed to Meadows Owens by the Subcommittee in its letter of July 18, 2006.

In its letter of July 18, the Subcommittee advised us that today's hearing would address, among other things, "the structure and operation of certain trusts and trust-owned corporations in the Isle of Man and Cayman Islands related to" our former clients identified in your letter as "Messrs. Sam and Charles Wyly and their families" (the "Clients").

Meadows Owens is a 31-member law firm with a practice concentration in taxation. Meadows Owens was established in 1983 and has historically provided clients with legal services in the areas of tax litigation, tax planning and estate planning. The Firm's tax litigation practice traditionally has centered on representing taxpayers in both civil and criminal tax controversies. The tax planning practice generally has involved advising clients about the tax implications of financial and business transactions. The estate practice has concentrated on assisting clients with the planning of their estates to comply with the clients' testamentary wishes, state probate laws and applicable federal and state tax laws.

Over the course of its 23-year existence, Meadows Owens has expanded beyond its original areas of concentration to encompass other areas, including real estate, corporate/securities, white-collar legal defense, and commercial litigation.

Meadows Owens does not, and has not, structured, promoted or provided opinions to promoters in connection with listed transactions as identified by the Internal Revenue Service. We are, however, often involved in tax controversies on behalf of clients who are in litigation with the Internal Revenue Service.

Most of the attorneys in the Firm who practice in the tax area have received specialized training beyond their basic law school education. For instance, 12 attorneys

have Masters of Law degrees in taxation from leading law schools such as New York University, Georgetown University and Southern Methodist University. Additionally, 7 attorneys have been certified in the area of taxation by the Texas Board of Legal Specialization. Finally, 8 attorneys are non-practicing Certified Public Accountants.

As previously communicated to members of the Subcommittee's staff, Meadows Owens' former Clients have instructed the Firm to maintain and protect the attorney-client and work product privileges. Accordingly, as dictated by law and applicable rules of professional conduct, we must act at all times to uphold and respect our former Clients' instructions. While strictly honoring their instructions, we have diligently attempted to assist the Subcommittee with its inquiries to the extent we are ethically permitted to do so.

In addition, we ask that the Subcommittee take notice of the fact that the attorney who oversaw and directed a majority of Meadows Owens' legal services for our former Clients passed away on July 25, 2003. His passing creates obvious difficulties in researching the background and details of various specific inquiries made by the Subcommittee's staff.

These obstacles notwithstanding, I can tell you that Meadows Owens was engaged from time to time by the Clients on a variety of legal matters within the areas in which we practice. The first such engagement occurred on or about mid- 1997. At this time, we no longer represent the Clients. Our representation terminated when it became apparent to us that a conflict might exist because of the possibility that members of the Firm might be witnesses in this matter. When we learned of this potential conflict, we immediately informed our Clients of our need to withdraw from all further representation.

During the period of our representation, the legal services performed were appropriate and in compliance with the applicable governing law and other precedent guiding such matters at that time.

While I cannot, of course, ethically disclose confidential information acquired in connection with our representation of our former Clients, I can, and will, respond to your questions during the hearing if it is possible to do so without disclosing client confidences.



*United States Senate*

**PERMANENT SUBCOMMITTEE ON INVESTIGATIONS**

*Committee on Homeland Security and Governmental Affairs*

*Norm Coleman, Chairman*

*Carl Levin, Ranking Minority Member*

**TAX HAVEN ABUSES:  
THE ENABLERS, THE TOOLS  
AND SECRECY**

**MINORITY & MAJORITY STAFF  
REPORT**

**PERMANENT SUBCOMMITTEE  
ON INVESTIGATIONS**



**RELEASED IN CONJUNCTION WITH THE  
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
AUGUST 1, 2006 HEARING**

**SENATOR CARL LEVIN**  
**Ranking Minority Member**  
**SENATOR NORM COLEMAN**  
**Chairman**  
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**TAX HAVEN ABUSES:  
THE ENABLERS, THE TOOLS, AND SECRECY**

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# # #

## TAX HAVEN ABUSES: THE ENABLERS, THE TOOLS AND SECRECY

August 1, 2006

Offshore tax havens and secrecy jurisdictions today hold trillions of dollars in assets.<sup>1</sup> While these jurisdictions claim to offer clients financial privacy, limited regulation, and low or no taxes, too often these jurisdictions have instead become havens for tax evasion, financial fraud, and money laundering. A sophisticated offshore industry, composed of a cadre of international professionals including tax attorneys, accountants, bankers, brokers, corporate service providers, and trust administrators, aggressively promotes offshore jurisdictions to U.S. citizens as a means to avoid taxes and creditors in their home jurisdictions. These professionals, many of whom are located or do business in the United States, advise and assist U.S. citizens on opening offshore accounts, establishing sham trusts and shell corporations, hiding assets offshore, and making secret use of their offshore assets here at home. Experts estimate that Americans now have more than \$1 trillion in assets offshore<sup>2</sup> and illegally evade between \$40 and \$70 billion in U.S. taxes each year through the use of offshore tax schemes.<sup>3</sup>

Utilizing tax haven secrecy laws and practices that limit corporate, bank, and financial disclosures, financial professionals often use offshore tax haven jurisdictions as a “black box” to hide assets and transactions from the Internal Revenue Service (IRS), other U.S. regulators, and law enforcement. This Report is an attempt to open that black box and expose how offshore and U.S. financial professionals are helping U.S. citizens conceal and secretly utilize offshore assets, while undermining, circumventing, or violating U.S. tax, securities, and anti-money laundering laws.

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<sup>1</sup> See, e.g., “The Price of Offshore,” Tax Justice Network briefing paper (3/05)(estimating that offshore assets of high net worth individuals now total \$11.5 trillion); “International Narcotics Control Strategy Report,” U.S. Department of State Bureau for International Narcotics and Law Enforcement Affairs (3/00), at 565-66 (identifying more than 50 offshore jurisdictions with assets totaling \$4.8 trillion). The Cayman Islands alone is now the fifth largest financial center in the world.

<sup>2</sup> “The Price of Offshore,” Tax Justice Network briefing paper (3/05)(estimating that offshore assets of high net worth individuals from North America total about \$1.6 trillion).

<sup>3</sup> See, e.g., Joe Guttentag and Reuven Avi-Yonah, “Closing the International Tax Gap,” in Max B. Sawicky, ed., *Bridging the Tax Gap: Addressing the Crisis in Federal Tax Administration* (2006). The \$40 to \$70 billion figure is intended to describe illegal tax evasion by mostly individual U.S. taxpayers using offshore tax schemes; illegal tax evasion by corporations using offshore tax schemes such as transfer pricing and offshore tax shelters would increase the total still further. *Id.* The IRS has estimated that corporate offshore tax evasion in 2001 totaled about \$30 billion. *Id.*

Offshore abuses are not a new story. In 1983, this Subcommittee investigated some of the same problems going on today.<sup>4</sup> News accounts regularly describe U.S. persons and businesses using offshore entities to commit tax evasion, financial fraud, and money laundering. In 2001, this Subcommittee took testimony from a U.S. owner of a Cayman Island offshore bank who estimated that 100% of his clients were engaged in tax evasion, and 95% were U.S. citizens.<sup>5</sup>

The evidence is overwhelming that inaction in combating offshore abuses has resulted in their growing more widespread and reaching new levels of sophistication. In 2000, Enron Corporation established over 441 offshore entities in the Cayman Islands.<sup>6</sup> In 2003, the IRS estimated that 500,000 U.S. taxpayers had offshore bank accounts and were accessing the funds with offshore credit cards.<sup>7</sup> A 2004 report found that U.S. multinational corporations are increasingly attributing their profits to offshore jurisdictions, allocating \$150 billion in 2002 profits to 18 offshore jurisdictions, for example, up from \$88 billion just three years earlier.<sup>8</sup> A 2005 study of high-net-worth individuals worldwide estimated that their offshore assets now total \$11.5 trillion.<sup>9</sup>

This Report examines the offshore industry behind these statistics, including the role of offshore service providers, the interactions between offshore and U.S. professionals who help to establish and manage offshore entities, and the range of sophisticated schemes being used today to enable U.S. citizens to hide and secretly utilize offshore assets.

To illustrate the issues, this Report presents six case histories showing how U.S. citizens, with the backing of an armada of professionals, hide assets, shift income offshore, or use offshore entities to circumvent U.S. laws. The first case history examines an offshore

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<sup>4</sup> See "Crime and Secrecy: the Use of Offshore Banks and Companies," hearing before the U.S. Senate Permanent Subcommittee on Investigations, S. Hrg. 98-151 (March 15, 16 and May 24, 1983).

<sup>5</sup> "Role of U.S. Correspondent Banking in International Money Laundering," hearing before the U.S. Senate Permanent Subcommittee on Investigations, S. Hrg. 107-84, (March 1, 2 and 6, 2001), testimony of John M. Mathewson, at 12-13.

<sup>6</sup> See 2000 Form 10-K filed with the SEC by Enron, Exhibit 21; "Report of Investigation of Enron Corporation and Related Entities Regarding Federal Tax and Compensation Issues, and Policy Recommendations," prepared by Joint Committee on Taxation staff (2/03), at 375.

<sup>7</sup> "Challenges Remain in Combating Abusive Tax Schemes," report by the Government Accountability Office to U.S. Senate Finance Committee, No. GAO-04-50 (11/03) at 1.

<sup>8</sup> "Data Show Dramatic Shift of Profits to Tax Havens," Tax Notes (9/13/04). See also "Governments and Multinational Corporations in the Race to the Bottom," Tax Notes (2/27/06)

<sup>9</sup> "The Price of Offshore," Tax Justice Network briefing paper (3/05).

promoter located in the United States who recruited clients through the internet and helped them create offshore structures. The second case history examines an offshore promoter who developed a how-to manual for going offshore and one of his U.S. clients who used that manual to move his assets to multiple tax havens. The third case history examines a U.S. businessman who, with the guidance of a prominent offshore promoter, moved between \$400,000 and \$500,000 in untaxed business income offshore. These cases demonstrate the use of phony loans, billing schemes, offshore credit cards, and other methods to take funds offshore to avoid taxes and creditors, and bring them back into the United States.

The fourth case history examines actions taken by a wealthy American to hide about \$450 million in stock and cash offshore by disguising his ownership of the corporations that held those assets. The fifth case history examines a complex securities transaction, known as POINT, which was aimed at sheltering over \$2 billion in capital gains from U.S. taxes, relying in part on offshore secrecy to shield its workings from U.S. law enforcement. The sixth, and final, case history examines two U.S. citizens who moved about \$190 million in stock option compensation offshore using a complex array of 58 offshore trusts and corporations, and utilized a wide range of offshore mechanisms to exercise direction over these assets and over \$600 million in investment gains. Together, these case histories raise a wide range of U.S. tax avoidance, securities laws, and anti-money laundering concerns.

## **I. EXECUTIVE SUMMARY**

### **A. Subcommittee Investigation**

The Subcommittee began this investigation into offshore abuses over one year ago. Over that time period, the Subcommittee has consulted with numerous experts in the areas of tax, securities, trust, anti-money laundering, and international law. The Subcommittee issued 74 subpoenas and conducted more than 80 interviews with a range of parties related to the issues and case histories examined in this Report. The Subcommittee reviewed over two million pages of documents, including memoranda, trust agreements, internal financial records, correspondence, and electronic communications, as well as materials in the public domain, such as legal pleadings, court documents, and SEC filings.

### **B. Overview of Case Histories**

This Report sets forth several case histories to lend insight into the operation of the offshore industry, its service providers and clients, and the impact of offshore abuses on U.S. tax, securities, and anti-money laundering laws.

**EDG: An Internet-Based Offshore Promoter.** This case history examines an offshore promoter located in the United States who recruited clients through the internet and helped them create offshore structures. Equity Development Group (EDG) is a company based in Dallas, Texas; its president, Samuel Congdon, is a U.S. citizen. Over the past six years, EDG utilized the internet to provide about 900 mainly American clients, many of relatively modest wealth, with the type of offshore services previously available primarily to high-net-worth individuals. With few resources, no employees, and only nine months prior experience in the industry, Mr. Congdon was able to quickly create and promote an online offshore facilitation business that provided a one-stop-shop for persons looking to establish an offshore structure. Mr. Congdon rarely met his clients, did not work with their lawyers or accountants, and seldom inquired into their intent. EDG told prospective clients that regardless of the offshore structures established for them, the client would retain full control of their offshore funds. Mr. Congdon told the Subcommittee that, in six years of operation, he could recall only one instance in which an offshore service provider declined to comply with a client instruction, in that case refusing to supply a sworn affidavit attesting to facts for a lawsuit. By connecting his clients with offshore banks and companies that establish and manage offshore trusts and corporations, and by acting as a liaison between his clients and the

offshore service providers, Mr. Congdon enabled his clients to move assets offshore, maintain control of them, obscure their ownership, and conceal their existence from family, courts, creditors, the IRS, and other government agencies.

**Turpen-Holliday: A How-To Manual.** This case history examines an offshore promoter who developed a how-to manual for going offshore and one of his U.S. clients who used that manual to move his assets to multiple tax havens. The promoter, Dr. Lawrence Turpen, of Reno, Nevada, specialized in offshore transactions, publishing a book on the subject in addition to his manual. He provided a wide range of services to his clients, facilitating their creation of offshore entities and accounts. One of his clients, Robert F. Holliday, used the how-to manual and Dr. Turpen's other services to establish shell corporations and trusts, both in offshore tax havens and in Nevada. Dr. Turpen selected offshore service providers that supplied nominee directors and trustees for Holliday's new entities, promising Mr. Holliday that they would comply with his directions. Mr. Holliday told the Subcommittee that he was the "puppet master" who instructed the offshore personnel on how to handle his offshore assets. Mr. Holliday did not include the offshore assets and income in his tax returns, even though under U.S. tax law, if he controlled them, he was required to report them.

On Dr. Turpen's suggestion, Mr. Holliday hid his ownership of the offshore assets by owning no shares in the shell corporations. Instead, the nominee directors appointed him a "management consultant" to the corporations, with authority to make business decisions and use corporate funds. Mr. Holliday typically transferred funds offshore by paying bills for fictitious services provided by the Nevada company which, in turn, paid fictitious bills presented by the offshore company. For example, Mr. Holliday transferred about \$450,000 in untaxed income to an Isle of Man shell corporation he controlled in payment for non-existent feasibility studies. To make use of the funds placed offshore, Mr. Holliday paid his bills using a credit card issued by an offshore bank, directed the offshore companies to pay designated expenses, and instructed the Nevada companies to borrow money from his offshore entities. These efforts allowed Mr. Holliday to conceal his income from the IRS, while enjoying control and use of the money. In 2004, both Mr. Holliday and Dr. Turpen pled guilty to tax-related conspiracy charges.

**Greaves-Neal: Diverting U.S. Business Income Offshore.** This case history examines a U.S. businessman who, with the guidance of a prominent offshore promoter, moved between \$400,000 and \$500,000 in untaxed business income offshore. Kurt Greaves, a Michigan



businessman, told the Subcommittee that he first contacted Terry Neal, an offshore promoter based in Oregon, after seeing an advertisement for offshore services in an in-flight magazine. Under Mr. Neal's guidance, Mr. Greaves used a variety of sham transactions to transfer untaxed business income offshore without giving up the ability to use and manage those funds. Mr. Greaves told the Subcommittee that all of the offshore service providers who managed his offshore corporations readily complied with his requests on how to handle his assets, even though he did not technically own any shares in the offshore corporations. He said that the offshore service providers even fabricated documents to support fictitious tax deductions, including a phony mortgage and insurance policy. Like Mr. Holliday, Mr. Greaves established shell corporations in Nevada as an additional layer of separation between him and his offshore assets, and arranged for fictitious bills and loans to move funds between his Nevada and offshore entities. On one occasion, Mr. Greaves tried to visit an offshore service provider he used in Nevis. He told the Subcommittee that he found the office in a small stone building on the beach near the docks. He said that when he knocked on the door, the woman who answered, whose voice he recognized from telephone conversations, refused to let him inside, discouraging personal contact. Though this offshore service provider would not allow Mr. Greaves into its office, it provided the services he needed to evade U.S. taxes. In 2004, both Mr. Greaves and Mr. Neal pled guilty to charges related to federal tax evasion.

**Anderson: Hiding Offshore Ownership.** This case history examines actions allegedly taken by a wealthy American to hide hundreds of millions of dollars in stock and cash offshore by disguising his ownership of the corporations that controlled those assets and failing to pay taxes on those assets. Walter C. Anderson was indicted for tax evasion in 2005, and is now awaiting trial. The government has developed evidence that Mr. Anderson took advantage of secrecy laws in multiple tax haven countries to create a structure of offshore corporations and trusts. According to the indictment, through a series of assignments, sales, and transfers, Mr. Anderson placed into these offshore entities about \$450 million in cash and stock, including large interests in telecommunications firms. He allegedly disguised his ownership of these assets through a range of techniques including shell companies, bearer shares, and nominee directors and trustees. In one instance, according to the indictment, Mr. Anderson set up an offshore shell corporation in the British Virgin Islands, gave its shares to a second shell corporation he established in the same jurisdiction, and had the second corporation send the shares to a bearer-share corporation in Panama, which he controlled. The government stated that it seized a document granting Mr. Anderson's mother the exclusive option to

purchase, for \$9,900, ninety-nine percent of the bearer share corporation which then held assets worth millions of dollars. According to the indictment, Mr. Anderson used these methods to evade more than \$200 million in Federal and District of Columbia income taxes.

**POINT: Offshore Securities Portfolio.** This case history examines a complex securities transaction used to shelter over \$2 billion in capital gains from U.S. taxes, relying in part on offshore secrecy to shield its workings from U.S. law enforcement. In contrast to the case histories examining offshore structures used over a period of years, this inquiry focuses on the use of offshore secrecy jurisdictions to facilitate one-time tax shelter transactions. The tax shelter was designed, promoted, and implemented by a Seattle-based securities firm, Quellos Group, LLC, (Quellos), with the assistance of lawyers, bankers, and other professionals. Quellos sold the shelter, called POINT (Personally Optimized INvestment Transaction), to six wealthy clients in six separate transactions. Together, the tax shelters were used in an effort to erase over \$2 billion in capital gains that would otherwise have been taxed, costing the U.S. Treasury lost revenue of about \$300 million.

The Subcommittee found that the POINT tax strategy was based upon billions of dollars worth of fake securities transactions that were used to generate billions of dollars in fake capital losses to offset real taxable capital gains of U.S. taxpayers so they could avoid paying taxes to the U.S. Treasury. The fake securities transactions were undertaken by two offshore shell corporations in the Isle of Man, Jackstones and Barnville, whose ownership has been kept secret. The transactions were carried out by compliant offshore administrators and trustees, since the corporations had no employees of their own. Using circular transactions and offsetting payments that cancelled each other out, these offshore corporations created a paper portfolio of over \$9 billion in U.S. high tech stocks that appeared to suffer price drops and generated the fake capital losses used in the POINT transactions. The fees charged by Quellos depended upon the amount of tax loss generated in each transaction for the taxpayer who bought the shelter; the more money the taxpayer “lost” from the transaction, the more Quellos charged for the scheme.

Six U.S. taxpayers, including Haim Saban and Robert Wood Johnson IV, purchased the tax shelter, paying fees totaling approximately \$65 million. Prominent law firms, such as Cravath, Swaine & Moore and Bryan Cave, provided written tax opinion letters affirming that it was “more likely than not” that the Quellos plan would produce the favorable tax consequences promised, and collaborated with Quellos on its design or implementation. The factual statements used to support the legal analysis in the opinion letters inaccurately described

the nature of the securities transactions generating the capital losses. The law firms accepted the representations of Quellos on these matters without inquiring behind them. Prominent U.S. and foreign financial institutions, including HSBC Bank, provided financing for the POINT transactions, without conducting adequate due diligence into the underlying transactions. Some communications involving persons who helped design, promote, and implement the tax shelter indicate that they may have deliberately hidden key aspects of the POINT transaction from the clients, lawyers, and financial institutions who participated in them.

**Wyls: 58 Offshore Trusts and Corporations.** The sixth, and final, case history comprises the most elaborate offshore operations reviewed by the Subcommittee. Over a 13-year period from 1992 to 2005, two U.S. citizens, Sam and Charles Wyly, assisted by an army of attorneys, brokers, and other professionals, transferred over 17 million stock options and warrants representing approximately \$190 million in compensation to a complex array of 58 trusts and shell corporations. The offshore trusts had either been established by the Wyls or named them as beneficiaries; the trusts owned the shell corporations that took possession of the stock options and warrants. In return, the Wyls obtained private annuity agreements from the offshore corporations. The Wyls took the position, on the advice of counsel, that because they had exchanged their stock options for annuities of equivalent value, no tax was due on their stock option compensation, until they received actual annuity payments years later. The first annuity payment was made ten years later in 2003. To date, about \$124 million in stock option compensation remains offshore and untaxed.

From 1992 through 2004, the Wyls and their representatives directed the offshore entities on exercising the stock options and warrants, and engaging in a wide range of securities trades and other transactions. The Wyls and their representatives conveyed their decisions to two individuals the Wyls had selected, called “trust protectors,” who communicated the decisions, worded as “recommendations,” to the offshore trustees, who implemented them. In addition to cashing in many of the options, the offshore entities used the cash and shares to generate substantial investment gains. The Wyls did not pay taxes on these gains, on advice from counsel, even though the U.S. tax code generally requires that income earned by a trust controlled by a U.S. person who funded or is a beneficiary of the trust be attributed to that U.S. person for tax purposes. The Wyly legal position was that the offshore trusts were independent entities. Over the 13 years examined in this Report, the offshore entities used more than \$600 million from untaxed stock sales and other investment gains to issue substantial loans to Wyly interests, finance Wyly-related business

ventures, and acquire U.S. real estate, furnishings, art, and jewelry for the personal use of Wyly family members. The offshore entities placed nearly \$300 million of these offshore dollars in two hedge funds and an investment fund established by the Wyllys.

The stock options exercised by the offshore entities came from three publicly traded corporations with which the Wyllys were associated, Michaels Stores Inc., Sterling Software Inc., and Sterling Commerce Inc. In addition to the tax issues, a key concern is whether, by sending millions of company stock options and warrants to offshore entities whose investments they directed, the Wyllys were using offshore secrecy laws to circumvent basic U.S. principles intended to ensure fair and transparent capital markets, including disclosure requirements for directors, officers and large shareholders, trading restrictions on privately acquired shares, and prohibitions against trading on nonpublic information. For most of the 13 years examined in this Report, U.S. securities regulators and the investing public were not informed of the extent of the Wyly-related offshore stock holdings and trading activity.

The Wyly transactions also raise issues related to compliance with anti-money laundering laws. Over the years, the 58 offshore trusts and corporations opened securities accounts at three prominent U.S. financial institutions, Credit Suisse First Boston (CSFB), Lehman Brothers, and Bank of America. All three financial institutions knew that the offshore entities were associated with the Wyly family, but never required the offshore entities to identify their beneficial owners. By 2003, when Bank of America had the accounts, the law was clear that the Bank had to identify the beneficial owners. Despite being pressed for nearly a year by its clearing broker to do so, Bank of America allowed the accounts to operate without obtaining the information required by law. In addition, when for tax purposes, the Wyly-related offshore entities submitted forms representing they were independent foreign entities not subject to IRS 1099 reporting requirements for U.S. taxpayers, Bank of America accepted the forms, despite knowing the Wyllys were directing the offshore entities' investments and benefitting from their account income. Had the offshore entities acknowledged that the Wyllys were the beneficial owners of the offshore trusts and corporations for purposes of complying with the anti-money laundering laws, and allowed their connection to the Wyllys be documented at Bank of America, it would have been harder for the Wyllys to deny a connection to these entities for tax and securities purposes.

Many of the offshore mechanisms used in this case history raise serious tax, securities, or other concerns, including the stock option-annuity swaps; pass-through loans using an offshore vehicle; securities

traded by offshore entities associated with corporate insiders; and the use of hedge funds and other investment vehicles to control use of funds placed offshore. Sam and Charles Wyly reaped a number of benefits from their offshore activities, including attempted deferral of taxes on their stock option compensation, nonpayment of taxes on hundreds of millions of dollars in offshore capital gains by entities they directed, a ready source of capital for their business ventures in the United States, and a ready source of funds to finance their personal interests. Among those impacted by the Wyly offshore activities are U.S. taxpayers who have to make up the lost revenue, and the investing public who were kept in the dark about the offshore stock holdings and trading activity of entities controlled by the directors of three publicly traded corporations.

### **C. Findings and Recommendations**

Based upon its investigation into offshore abuses undermining U.S. tax, securities, and anti-money laundering (AML) laws, the Subcommittee staff makes the following findings and recommendations.

#### **Report Findings**

- 1. Control of Offshore Assets.** Offshore “service providers” in tax havens use trustees, directors, and officers who comply with client directions when managing offshore trusts or shell corporations established by those clients; the offshore trusts and shell corporations do not act independently.
- 2. Tax Haven Secrecy.** Corporate and financial secrecy laws and practices in offshore tax havens make it easy to conceal and obscure the economic realities underlying a great number of financial transactions with unfair results unintended under U.S. tax and securities laws.
- 3. Ascertaining Control and Beneficial Ownership.** Corporate and financial secrecy laws and practices in offshore tax havens are intended to make it difficult for U.S. law enforcement, creditors, and others to learn whether a U.S. person owns or controls an allegedly independent offshore trust or corporation. They also intentionally make it difficult to identify the beneficial owners of offshore entities.
- 4. Offshore Tax Haven Abuses.** U.S. persons, with the assistance of lawyers, brokers, bankers, offshore service providers, and others, are using offshore trusts and shell corporations in

offshore tax havens to circumvent U.S. tax, securities, and anti-money laundering requirements.

**5. Anti-Money Laundering Abuses.** U.S. financial institutions have failed to identify the beneficial owners of offshore trusts and corporations that opened U.S. securities accounts, and have accepted W-8 forms in which offshore entities represented that they beneficially owned the account assets, even when the financial institutions knew the offshore entities were being directed by or were closely associated with U.S. taxpayers.

**6. Securities Abuses.** Corporate insiders at U.S. publicly traded corporations have used offshore entities to trade in the company's stock, and these offshore entities have taken actions to circumvent U.S. securities safeguards and disclosure and trading requirements.

**7. Stock Option Abuses.** Because stock option compensation is taxed when exercised, and not when granted, stock options have been used in potentially abusive transactions to defer and in some cases avoid U.S. taxes.

**8. Hedge Fund Transfers.** U.S. persons who transferred assets to allegedly independent offshore entities in a tax haven have then directed those offshore entities to invest the assets in a hedge fund controlled by the same U.S. persons, thereby regaining investment control of the assets.

### **Report Recommendations**

**1. Presumption of Control.** U.S. tax, securities, and anti-money laundering laws should include a presumption that offshore trusts and shell corporations are under the control of the U.S. persons supplying or directing the use of the offshore assets, where those trusts or shell corporations are located in a jurisdiction designated as a tax haven by the U.S. Treasury Secretary.

**2. Disclosure of U.S. Stock Holdings.** U.S. publicly traded corporations should be required to disclose in their SEC filings company stock held by an offshore trust or shell corporation related to a company director, officer, or large shareholder, even if the offshore entity is allegedly independent. Corporate insiders should be required to make the same disclosure in their SEC filings.

**3. Offshore Entities as Affiliates.** An offshore trust or shell corporation related to a director, officer, or large shareholder of a U.S. publicly traded corporation should be required to be treated as an affiliate of that corporation, even if the offshore entity is allegedly independent.

**4. 1099 Reporting.** Congress and the IRS should make it clear that a U.S. financial institution that opens an account for a foreign trust or shell corporation and determines, as part of its anti-money laundering duties, that the beneficial owner of the account is a U.S. taxpayer, must file a 1099 form with respect to that beneficial owner.

**5. Real Estate and Personal Property.** Loans that are treated as trust distributions under U.S. tax law should be expanded to include, not just cash and securities as under present law, but also loans of real estate and personal property of any kind including artwork, furnishings, and jewelry. Receipt of cash or other property from a foreign trust, other than in an exchange for fair market value, should also result in treatment of the U.S. person as a U.S. beneficiary.

**6. Hedge Fund AML Duties.** The Treasury Secretary should finalize a proposed regulation requiring hedge funds to establish anti-money laundering (AML) programs and report suspicious transactions to U.S. law enforcement. This regulation should apply to foreign-based hedge funds that are affiliated with U.S. hedge funds and invest in the United States.

**7. Stock Option-Annuity Swaps.** Congress and the IRS should make it clear that taxes on stock option compensation cannot be avoided or deferred by exchanging stock options for other assets of equivalent value such as private annuities.

**8. Sanctions on Uncooperative Tax Havens.** Congress should authorize the U.S. Treasury Secretary to identify tax havens that do not cooperate with U.S. tax enforcement efforts and eliminate U.S. tax benefits for income attributed to those jurisdictions.

## II. THE OFFSHORE INDUSTRY

The business of promoting, developing, and administering offshore financial services has become a massive and complex industry. The range of services and products available offshore now parallels what is available domestically, but offshore service providers typically advertise a level of secrecy and tax avoidance that cannot be found onshore. This Report presents a number of case studies that illustrate the roles played by offshore promoters and service providers, the products and services they offer, and how they interact with U.S. persons to hide assets and shift income offshore.

Components of the offshore industry can be summarized as follows.

**Offshore Jurisdictions.** First and foremost, the offshore industry relies upon jurisdictions that promise secrecy and anonymity to persons doing business in their territories. At least 50 such jurisdictions are operating in the world today,<sup>10</sup> and the extent to which an offshore jurisdiction maintains secrecy laws and practices is typically used as a key selling point for persons considering moving their assets offshore. These jurisdictions typically provide several layers of secrecy protections to persons transacting business with their residents. U.S. law enforcement typically is not even aware that an offshore entity or account exists. Once a regulatory or law enforcement agency does become aware of the entity or account, most offshore jurisdictions require a long and cumbersome process in order to gain access to any important information, such as the identities of an offshore corporation's beneficial owners or a trust's grantors and beneficiaries. In many offshore jurisdictions it is a crime for a bank or other financial institution to divulge the names of account holders or client-specific financial transactions outside of this prolonged process. Moreover, a private party with a claim against an offshore entity, such as a plaintiff with a civil judgment, faces huge legal and logistic hurdles to find or access offshore accounts and assets.

In addition to corporate, financial, and trust secrecy, the legal regimes of offshore jurisdictions typically place restrictions on assisting international tax enforcement efforts. Most of these jurisdictions impose

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<sup>10</sup> See, e.g., "International Narcotics Control Strategy Report," U.S. Department of State Bureau for International Narcotics and Law Enforcement Affairs (3/00), at 574-77 (identifying more than fifty offshore jurisdictions). It should also be noted that most states in the United States allow persons to create corporations without providing beneficial ownership information. See GAO Report 06-376, "Company Formations: Minimal Ownership Information is Collected and Available," 4/06, <http://www.gao.gov/new.items/d06376.pdf>.



little or no taxes on nonresidents. Until recently, many offshore jurisdictions refused to cooperate with international law enforcement requests for information related to tax matters, because tax evasion was not considered a crime within the jurisdiction itself. In addition, offshore regulators do not have the ability to easily monitor individual transactions by the offshore service providers.

International organizations have expressed concern over the lack of information exchange on tax matters, as well as poor cooperation with international anti-money laundering investigations, and have taken action to pressure non-cooperative jurisdictions.<sup>11</sup> In response, in recent years, some offshore jurisdictions have improved their anti-money laundering laws and signed tax information exchange agreements with other governments. However, the heavy dependence of offshore jurisdictions on their financial sectors invites poor implementation of these reforms and weak government oversight.

**Offshore Promoters.** The transfer of funds offshore often begins with an offshore promoter. Promoters are individuals and firms who work to bring new clients offshore and facilitate the offshore movement of their assets. Promoters typically use the internet, seminars, books, mailings, and other means to advertise the benefits of taking assets offshore. They typically provide advice on the types and relative advantages of available offshore structures and connect individual clients to offshore service providers that may suit their needs. Often this advice includes recommending an offshore jurisdiction whose laws and regulatory structure best advance the client's objectives. Some promoters also act as an intermediary between their clients, the offshore governments, and local service providers.

Promoters typically earn income through fees charged to clients and referral fees paid by the offshore service providers and financial institutions to whom they refer clients. Client fees are generally either a commission based on the value of assets going offshore, an overall charge for an offshore "package" of services, or flat fees for specific services.

**Corporate Formation Agents and Trust Companies.** A key group of offshore service providers is made up of corporate formation

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<sup>11</sup> See, e.g., "Towards Global Tax Co-operation ... Progress in Identifying and Eliminating Harmful Tax Practices," prepared by the Organization for Economic Cooperation and Development (6/00)(including list of 35 "uncooperative tax havens"); "Review to Identify Non-Cooperative Countries or Territories: Increasing the Worldwide Effectiveness of Anti-Money Laundering Measures," prepared by the Financial Action Task Force on Money Laundering (6/22/00).

agents and trust companies. These service providers are the individuals or firms who establish the offshore corporations and trusts that serve as the recipients of assets transferred offshore. These offshore service providers, sometimes in conjunction with a promoter, fill out the paperwork, file it with the appropriate government agencies, pay fees, and often provide trustees, nominee directors, or nominee officers for the required documentation. The client generally never needs to travel to the jurisdiction, and the client's name typically appears nowhere on the formation documents.

Most offshore corporations and trusts are shell operations that exist only on paper and function without their own employees or offices. They usually have little more than an offshore mailing address and an offshore individual empowered to sign documents on behalf of the entity. Once a trust or corporation is created, the client can open banking or brokerage accounts in its name, rather than in the client's own name. This trust or corporation can then be listed on U.S. bank transfers and other documents as the owner of the funds, even if the client is the only person with authority over the accounts. Real estate, stock, artwork, or other property can similarly be held in the name of the offshore entity.

Some clients are satisfied with a single offshore corporation or trust. Others pay for the formation of a more complex offshore structure consisting of several related corporations and trusts to disguise the client's relationship to the offshore assets they hold. For example, an offshore service provider may create one or more offshore corporations to serve as the owner of record for different client assets and offshore accounts, and it may form one or more offshore trusts to wholly own the corporations. Many corporate formation agents and trust companies will also supply trustees and nominee corporate directors and officers to give the entities the appearance of independent, functioning entities, while ensuring that the client's name is in no way attached to them. In some cases, the offshore service provider and client may sign a side letter agreement or other document attesting to the fact that the client is the beneficial owner of the offshore assets, since no other document evidences the client's ownership.<sup>12</sup>

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<sup>12</sup> See, e.g., "Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities," S. Hrg. 106-428 hearings before the U.S. Senate Permanent Subcommittee on Investigations (11/9/99, 11/10/99), at 890 (discussing a Cayman corporation created for Raul Salinas, then brother to the president of Mexico, where his name did not appear on the incorporation documents, but was included in separate documentation maintained by Cititrust in the Cayman Islands, under secrecy laws restricting its disclosure).

As the offshore industry has expanded, competition among corporate formation agents and trust companies has increased. This competition has led to lower fees and quicker turn-around times in the establishment of new offshore entities. In addition, it has further weakened compliance with fiduciary duties and regulations associated with creating and managing offshore entities.

**Corporate and Trust Administrators.** In addition to forming new offshore entities, offshore service providers typically offer to manage the trusts and corporations they create, for an annual management fee. These management services include filing annual reports and paying fees to the government, authorizing corporate or trust actions, operating bank and securities accounts, keeping records, and handling correspondence. Administrators typically maintain records offshore under secrecy laws that keep them out of the reach of regulatory personnel and other onshore investigators.

As the following case histories demonstrate, offshore corporate and trust administrators typically ensure client control over the assets held by the offshore entities. Control is assured through various means. For example, administrators may appoint a nominee director of an offshore corporation in order to have the name of a natural person other than the client on the incorporation documents, but then place all of the corporate assets in an account for which the client is the sole signatory. Trust administrators also often appoint a trustee who agrees to follow all client recommendations for trust activities.

**Trust Protectors.** For the management of trusts, some service providers also supply individuals who serve as so-called “trust protectors.” The role of trust protector is generally not defined in law, and these persons can provide a wide range of services. In some cases they serve to safeguard trust assets from misappropriation, while in others they effectively manage the trust assets. Some clients select a U.S. person who the client knows and trusts; others select offshore personnel outside the reach of U.S. law. Many offshore trusts are established with the intention of maintaining client control, and in such cases trust protectors can serve as conduits of the client’s instructions to the trustees, with the trustees merely rubber stamping the protectors’ directions. Such an arrangement permits greater client control while maintaining the appearance of trustee independence.

**Financial Institutions.** Financial institutions are also crucial players in the offshore services industry. Offshore banks and securities firms open accounts for the shell entities that hold the clients’ offshore assets. These firms typically have correspondent accounts with one or

more U.S. financial institutions that function as gateways into the U.S. financial system. The U.S. institutions then provide international wire transfer services, financing, and brokerage services for the offshore financial institution, often without knowing the identity of the clients whose funds are involved.<sup>13</sup> Many U.S. banks and securities firms open accounts onshore in the name of the offshore entities. These offshore entities then make use of the U.S. financial system.

**Law Firms.** Law firms are still another set of key players in today's offshore industry. Lawyers help establish offshore structures, draft financial instruments, and provide legal opinions justifying offshore transactions. In some cases, law firms take an even more active role, designing offshore structures for their clients, identifying offshore service providers, and conducting negotiations with these providers on the clients' behalf.

**Tools for Transferring Assets.** Onshore promoters and offshore service providers have devised a wide range of techniques for transferring assets offshore and then bringing funds back into the United States for the client's use. Some of these techniques are well-established. For example, offshore banks typically issue ATM or credit cards in the name of a shell corporation or trust. Clients can then use these cards in the United States to access their offshore funds, just as if the assets were in a domestic bank. Clients can also make sham loans to their offshore entities to move funds offshore or accept loans from offshore entities to bring funds back into the United States. Similarly, clients and their offshore entities can pass funds by billing each other for fictional services. Assets can also be moved in and out of offshore jurisdictions through shell intermediaries to disguise their source and destination. Recently, offshore service providers have developed new methods to transfer assets between onshore and offshore entities, including the use of annuities, mortgages, and offshore insurance companies. These techniques are explained in the case histories that follow.

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<sup>13</sup> For more information on how offshore banks use correspondent accounts at U.S. banks, see "Role of U.S. Correspondent Banking in International Money Laundering," S. Hrg. 107-84 hearing before the U.S. Senate Permanent Subcommittee on Investigations (3/1/01, 3/2/01, and 3/6/01).

### Offshore Jurisdictions Discussed in the Case Histories

This Report presents several case histories of persons who hid assets or shifted income to offshore jurisdictions, including Belize, the British Virgin Islands, the Cayman Islands, the Isle of Man, Nevis, and Panama. While these are only a few of the offshore jurisdictions where U.S. citizens have placed their assets, the case histories demonstrate how they were used by U.S. citizens to move money offshore.

Belize is a small nation on the Caribbean coast of Central America. It is home to a developing offshore financial industry, including eight offshore banks, one offshore insurance company, 23 trust companies, and 38,471 registered offshore corporations. Officials in the country have reported a recent increase in financial crimes, including bank fraud, forgery, and counterfeiting.<sup>14</sup>

The British Virgin Islands (BVI) is a group of islands in the Caribbean and an overseas territory of the United Kingdom. It has licensed 11 banks, 90 trust companies, and 90 registered agents.<sup>15</sup> The British Virgin Islands has over 500,000 registered offshore corporations,<sup>16</sup> apparently the most of any offshore jurisdiction.

The Cayman Islands is a group of islands in the Caribbean and an overseas territory of the United Kingdom. It is the world's fifth-largest financial center and has a well-developed offshore financial services industry. Firms in the Cayman Islands provide private banking, brokerage services, mutual funds, insurance, trusts, and company formation and management. It is home to over 500 banks and trust companies, 7,100 mutual and hedge funds, and 727 captive insurance companies.<sup>17</sup>

The Isle of Man is an island in the Irish Sea and a Crown Dependency of the United Kingdom. It is home to 171 offshore service

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<sup>14</sup> "International Narcotics Control Strategy Report, Volume II: Money Laundering and Financial Crimes," U.S. Department of State Bureau for International Narcotics and Law Enforcement Affairs (3/06), at 92-94.

<sup>15</sup> *Id.* at 111.

<sup>16</sup> "British Virgin Islands - Overseas Territory of the United Kingdom: Assessment of the Supervision and Regulation of the Financial Sector, Volume II - Detailed Assessment of Observance of Standards and Codes," IMF Country Report No. 04/93, International Monetary Fund (4/04), at section 93.

<sup>17</sup> "International Narcotics Control Strategy Report, Volume II: Money Laundering and Financial Crimes," U.S. Department of State Bureau for International Narcotics and Law Enforcement Affairs (3/06), at 124.

providers, including banks, trust companies, and company formation agents. Together these firms managed about \$57 billion in bank deposits, \$12 billion in collective investment schemes, \$33 billion in life insurance funds, and \$11 billion in non-life insurance funds.<sup>18</sup>

Panama is a nation in Central America. It is home to 34 offshore banks and approximately 350,000 offshore companies. The State Department considers Panama “particularly vulnerable to money laundering because of its proximity to major drug-producing countries, its sophisticated international banking sector, [and] its dollar-based economy.” Bearer bonds also present “a potential vulnerability that could be exploited by money launderers.”<sup>19</sup>

St. Kitts and Nevis is a federation of two islands in the Caribbean, each with the authority to organize its own financial industry. Most of the offshore financial business is concentrated in Nevis. St. Kitts and Nevis is home to one offshore bank, 50 trust and company service providers, 950 trusts, and 15,000 offshore corporations. The State Department considers the nation a “major risk for corruption and money laundering, due to a high volume of narcotics trafficking” and “an inadequately regulated economic citizenship program.”<sup>20</sup>

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<sup>18</sup> *Id.* at 217.

<sup>19</sup> *Id.* at 297.

<sup>20</sup> *Id.* at 353.

### III. EDG CASE HISTORY: AN INTERNET-BASED OFFSHORE PROMOTER

Most U.S. citizens do not venture offshore without assistance. Over the years, a variety of companies, in the United States and abroad, have developed to promote and facilitate the establishment of offshore financial structures. These companies range in size and sophistication from single-employee, owner-operated businesses to multi-national corporations with hundreds of employees.

In the past, offshore promoters often worked with clients in person, and advertised at trade shows and in speciality publications. With the advent of the internet age, many offshore promoters established a presence online. The internet has lowered the barriers of entry into the offshore business for both promoters and clients. Promoters can reach countless potential clients through search engines and online advertising. Potential clients can access information about the offshore industry instantaneously, anonymously, and in the comfort of their own home. Promoters and their clients need never meet. In addition, online promoters are often well equipped to offer offshore solutions to people of modest wealth, not just the high-net-worth individuals sought out by traditional promoters. This case history focuses on one such internet promoter currently operating in the United States, called Equity Development Group (EDG).

**Background.** Pursuant to a formal request, Sam Congdon, EDG's founder, president, and sole employee, agreed to be interviewed by the Subcommittee, and to produce relevant documentation.<sup>21</sup> Equity Development Group is a Dallas, Texas, based company that helped set up offshore trusts, companies, and bank accounts. Nearly all of EDG's clients learned about EDG online. EDG acted as an intermediary between clients seeking to move their assets offshore, and the offshore institutions that provided the offshore structures. EDG presents a good example of the role that online promoters and facilitators play in helping U.S. citizens conceal assets offshore.<sup>22</sup>

Mr. Congdon established EDG in 1999, after receiving a BA in Economics from Hillsdale College in Michigan, an MBA from Southern Methodist University in Texas, and working for nine months in the offshore service industry, at a company called Universal Corporate Services. Mr. Congdon is EDG's sole employee. The company

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<sup>21</sup> Subcommittee interview of Mr. Congdon (6/30/06).

<sup>22</sup> EDG has clients from around the world, but most of its clients are from the United States and Canada. Subcommittee interview of Mr. Congdon (6/30/06).

maintains a webpage, [www.equitydevelopers.com](http://www.equitydevelopers.com), which serves as its main interface with clients and potential clients. Mr. Congdon told the Subcommittee that EDG has had about 900 clients throughout its existence.<sup>23</sup> The great majority of those clients first contacted EDG through its website.<sup>24</sup> The EDG website states that the company also maintains an office in Nassau, Bahamas, but Mr. Congdon told the Subcommittee that the Nassau office is just a mailbox, and that he, the company's President and sole employee, has never been to the Nassau office.<sup>25</sup>

**Services.** EDG endeavored to be a one-stop-shop for clients seeking to establish an offshore structure. EDG devotes much of its website to explaining the offshore structures that EDG can create for its clients. The site promotes the establishment of offshore corporations, referred to as "international business corporations" (IBCs), as well as offshore trusts, offshore bank and brokerage accounts, and offshore addresses.<sup>26</sup> It also features an online survey to match prospective clients to the right types of structures<sup>27</sup> and an order form for purchase of EDG's services.<sup>28</sup> The details of these arrangements were frequently finalized in e-mail correspondence.<sup>29</sup>

On its website, EDG advertises, "EDG can recommend offshore products and services to suit anyone's needs. . . . We can form offshore companies, trusts, open offshore bank and brokerage accounts, and establish secure offshore addresses; all in the locations that are most advantageous to a client's individual circumstances."<sup>30</sup> Clients that decide to use EDG can purchase offshore incorporation products through its website. The website contains a menu of offshore products and an e-commerce platform to allow online purchases. As of July 2006, EDG offers for purchase online two "complete offshore packages," Belize, BVI, and Nevis international business corporations, an "Offshore Asset Protection Trust," bank accounts in Antigua, Curacao, St. Lucia, and

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<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> EDG Website, [www.equitydevelopers.com/offshore\\_101\\_full.asp](http://www.equitydevelopers.com/offshore_101_full.asp) (viewed 10/31/05).

<sup>27</sup> EDG Website, [www.equitydevelopers.com/offshore\\_planning\\_center.asp](http://www.equitydevelopers.com/offshore_planning_center.asp) (viewed 7/5/06).

<sup>28</sup> Id. at [www.equitydevelopers.com/downloads/orderform.pdf](http://www.equitydevelopers.com/downloads/orderform.pdf).

<sup>29</sup> See, e.g., 10/10/05 email from a potential client to Mr. Congdon (EDG-EML023-28).

<sup>30</sup> EDG Website, [http://www.equitydevelopers.com/what\\_we\\_do.asp](http://www.equitydevelopers.com/what_we_do.asp), (viewed 7/7/06).



Switzerland, brokerage accounts in Panama and the Turks and Caicos, offshore mail forwarding, various trust, bank, and corporate documents, and related services including bearer share certificates, corporate seals, powers of attorney, offshore notary services, changes of corporate name, and certificates of good standing. EDG's "Offshore Package #1," which costs \$2,500, includes an offshore corporation in Belize, an offshore trust in the Bahamas, two offshore accounts, and offshore mail forwarding for a year. EDG's "Offshore Package #2" costs \$2,850 and differs from the first package in that the offshore corporation is formed in Nevis and promises a quicker set-up. Mr. Congdon told the Subcommittee that he typically set up a corporation with each trust that he established.<sup>31</sup>

EDG also sold shelf companies, which are shell corporations that have been in existence for some period of time before they are purchased. EDG's website explains, "A small percentage of individuals and corporations that go offshore want to demonstrate that their offshore company has been in existence for several months or years. A Shelf Company is the perfect solution for this scenario."<sup>32</sup> EDG's website contains a menu of shelf companies, the oldest dating to January 1, 2001. Shelf companies are available from Belize, the British Virgin Islands, Gibraltar, and Nevis, and range in price from \$2,500 to \$6,200. In general, EDG charges more for the older shelf companies. Several of the listed shelf companies are advertised as having same day shipping available. Price of purchase includes "an original Certificate of Good Standing, government, registered agent, and nominee director fees."<sup>33</sup>

Mr. Congdon typically included a mark-up in the price of his products, and received referral fees from some of the offshore institutions he worked with. Documents obtained by the Subcommittee indicate that EDG grossed several hundred thousand dollars in this way in 2003 and 2004.<sup>34</sup>

**Acting as an Intermediary.** Mr. Congdon served as a guide and an intermediary for clients as they established financial structures with banks, trust companies, and foreign sovereignties. Many of EDG's transactions with clients and offshore institutions were conducted online.

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<sup>31</sup> Subcommittee interview of Mr. Congdon (6/30/06).

<sup>32</sup> EDG Website, [www.equitydevelopers.com/learn\\_shelf\\_companies.asp](http://www.equitydevelopers.com/learn_shelf_companies.asp) (viewed 7/8/06).

<sup>33</sup> *Id.*; see also 1/10/05 email from Alpha Services Limited employee to Mr. Congdon (EDG-EML388-90).

<sup>34</sup> EDG Document, "New Revenue Comparison" (EDG-HD161).

When a client purchased an offshore package from EDG, Mr. Congdon typically collected all of the relevant application documents from the banks and trust companies involved. Many of these documents were kept in electronic form and emailed between Mr. Congdon, the client, and the offshore institutions. For non-electronic paperwork, such as due diligence material for banks, Mr. Congdon typically collected the material from his clients and then express-mailed it to the banks. Mr. Congdon stated that EDG also kept its clients' documents on an offshore computer server.<sup>35</sup>

Mr. Congdon also served as a liaison between his clients and the trustees and directors of their trusts and companies. Generally, Mr. Congdon chose the trustees, protectors, and directors for his clients' companies and trusts, and served as the point of contact between them unless the client chose to serve as the sole director, which was rare. Mr. Congdon said that the majority of his clients preferred an appointed director. The trustees, protectors, and directors that Mr. Congdon chose were professionals working for offshore trust companies. Mr. Congdon estimated that one percent of his clients chose their own trust protectors.<sup>36</sup>

In the case of shell corporations established in Nevis, Mr. Congdon played a larger role, acting as owner and director during a company's incorporation process. Mr. Congdon stated that he performed this role for administrative purposes.<sup>37</sup> Under this system, the client's desired company was incorporated with Mr. Congdon as the sole director, and all shares of the company were issued to him.<sup>38</sup> Then, Mr. Congdon held a board meeting, at which he was the sole participant, and at the board meeting Mr. Congdon resigned as director, resolved to dissolve and destroy the stock certificates issued in his name, issued bearer shares for the company, and appointed the client, or a nominee, as the director of the company. Then Mr. Congdon shipped the bearer shares to his client.<sup>39</sup> Mr. Congdon told the Subcommittee that he never actually

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<sup>35</sup> Subcommittee interview of Mr. Congdon (6/30/06).

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> Id. See, e.g., "Minutes of the first meeting of the Board of Directors of RSC Inc." (7/8/04) (EDG-HD025-47 at 34-35).

<sup>39</sup> Subcommittee interview of Mr. Congdon (6/30/06). See e.g., "Resolutions of the Board of Directors of RSC Inc." (7/14/04) (EDG-HD047).

owned the companies that he established in this way, but rather, that he held them in trust for his clients.<sup>40</sup>

**Advertising and Promotion.** Mr. Congdon primarily used the internet to advertise and promote EDG's business of establishing offshore financial structures. Most of EDG's clients found the firm through the internet, after which Mr. Congdon corresponded with them over email. In addition, on two occasions in the first years of EDG's operations, Mr. Congdon set up a promotional booth at an industry trade show.<sup>41</sup>

The EDG website was the most important way that Mr. Congdon promoted his business to potential clients. He told the Subcommittee that he paid Google for a top position on certain searches, in order to direct greater traffic to his site.<sup>42</sup> He also hired web development professionals to improve his website, which further increased his web business. After viewing the website, prospective clients could purchase offshore products online or fill out an online form that sent an email to Mr. Congdon. Mr. Congdon typically answered inquiries promptly and often suggested an offshore structure to meet a potential client's requirements.

**Benefits of Going Offshore.** The website lists three primary benefits of taking assets offshore. First, it advertises offshore structures as "a wise and effective means of protection from ruinous lawsuits."<sup>43</sup> Correspondence between Mr. Congdon and prospective clients confirms that the ability to protect assets from liability for tort, divorce, or other legal claims motivated many of EDG's clients. In one such email, Mr. Congdon promised that "EDG's Complete Offshore Package ... will protect you from lawsuits and from relatives being able to take your property and funds away."<sup>44</sup> Mr. Congdon told the Subcommittee that

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<sup>40</sup> Subcommittee interview of Mr. Congdon (6/30/06).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> EDG Website, [www.equitydevelopers.com/why\\_go\\_offshore.asp](http://www.equitydevelopers.com/why_go_offshore.asp) (viewed 10/31/05).

<sup>44</sup> 5/12/05 email from Mr. Congdon to a potential client (EDG-EML244); see also 7/8/05 email from Mr. Congdon to a potential client (EDG-EML335) offering the client an option "to protect [his] assets from aggressive American lawyers and others;" and 5/20/05 email from Mr. Congdon to a potential client (EDG-EML246) responding to the client's desire to protect assets from his "greedy former wife and her new husband."

he instructed prospective clients seeking to escape judgments to consult counsel.<sup>45</sup> The website contains no such warning.<sup>46</sup>

Second, the website promotes offshore structures as a way to ensure “financial privacy,” keeping assets away from “credit agencies,” “asset collectors,” and potential plaintiffs. “Unless deliberate steps are taken to insure privacy,” the website explains, “sensitive and confidential information could easily get into the wrong hands. Placing bank and brokerage accounts offshore will keep them off the asset collector’s radar screen.”<sup>47</sup> Emails from Mr. Congdon also indicate that the privacy provided by offshore structures affords protection against identity theft: “So for the purposes of identity theft, offshore accounts are many times safer than US accounts. There’s really not any comparison.”<sup>48</sup>

Finally, the website advertises the “regulatory advantages” of taking assets offshore. Noting that “domestic businesses and operations are often plagued by excessive regulation,” the website explains that “[o]ffshore jurisdictions are intentionally business-friendly and have regulations that are straightforward, simple to understand and inexpensive to comply with.”<sup>49</sup> The website does not explain which regulatory requirements can be avoided by taking assets offshore.

**Tax Avoidance.** The current version of the EDG website makes no mention of tax avoidance as a benefit of taking assets offshore. However, it is clear that Mr. Congdon knew that many of his clients moved their assets offshore to avoid U.S. taxation. Moreover, several prospective clients responding to the website in 2005 expressed an interest in creating offshore structures for this purpose. Mr. Congdon’s responses to these inquiries varied. In one case, he told the prospective client that tax benefits from offshore structures were an “urban legend.”<sup>50</sup> In other emails, he recommended that the questioner seek the opinion of a tax professional.<sup>51</sup> Mr. Congdon told the Subcommittee that

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<sup>45</sup> Subcommittee interview of Mr. Congdon (6/30/06).

<sup>46</sup> EDG Website, [www.equitydevelopers.com/why\\_go\\_offshore.asp](http://www.equitydevelopers.com/why_go_offshore.asp) (viewed 10/31/05).

<sup>47</sup> *Id.*

<sup>48</sup> See, e.g., 4/21/05 11:04am email from Mr. Congdon to potential buyer of EDG (EDG-EML229).

<sup>49</sup> EDG Website, [www.equitydevelopers.com/why\\_go\\_offshore.asp](http://www.equitydevelopers.com/why_go_offshore.asp) (viewed 10/31/05).

<sup>50</sup> 4/19/05 email from Mr. Congdon to a potential client (EDG-EML226).

<sup>51</sup> 3/23/05 email from Mr. Congdon to a potential client (EDG-EML259).

this was his standard response.<sup>52</sup> In response to another email from a potential client, Mr. Congdon simply ignored a question about tax issues.<sup>53</sup>

When Mr. Congdon first started his business, he used a PowerPoint presentation, obtained by the Subcommittee, at two trade shows to promote EDG. Like the current website, the PowerPoint presentation promotes increased financial privacy,<sup>54</sup> but in contrast to the website, the presentation focuses on the tax benefits of moving assets offshore. For example, two slides tout the additional money to be made offshore by avoiding the United States “20% Tax Rate.”<sup>55</sup> Another slide declares “President Clinton vetoed the tax cut bill. Who cares? Offshore investors don’t!”<sup>56</sup>

Mr. Congdon told the Subcommittee that he only delivered this presentation at two trade shows, one in New York and one in San Francisco, in 1999 and 2000, attended by 15 to 20 people of which only two or three became clients.<sup>57</sup> He stated that the presentation refers only to a specific tax-deferred investment vehicle called a Variable Universal Life Insurance policy. Though the presentation itself does not mention the Variable Universal Life Insurance policy, Mr. Congdon told the Subcommittee that he had not wanted to use such a technical term in his presentation. Mr. Congdon told the Subcommittee that he only established one such insurance policy.<sup>58</sup>

From at least February 23, 2001, until July 24, 2004, EDG also promoted the tax benefits of its offshore packages online. During that time, the EDG website included an “offshore calculator.”<sup>59</sup> The offshore calculator was an interactive application that compared the growth of an investment account onshore and offshore. A visitor to the website could

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<sup>52</sup> Subcommittee interview of Mr. Congdon (6/30/06).

<sup>53</sup> 8/8/05 email from Mr. Congdon to a potential client (EDG-EML347). The potential client expresses an interest in “finding ways to limit taxability, liability and protection of assets.” Mr. Congdon responds to specific questions about moving real estate and other investments into the offshore structure, and does not respond to the potential client’s desire for tax avoidance.

<sup>54</sup> PowerPoint presentation, “Offshore Investment” (EDG-PPT001-21, at 10).

<sup>55</sup> *Id.* at EDG-PPT008-9.

<sup>56</sup> PowerPoint presentation, “Offshore Privacy, Protection & Tax Savings” (EDG-PPT022-49 at 28).

<sup>57</sup> Subcommittee interview of Mr. Congdon (6/30/06).

<sup>58</sup> *Id.*

<sup>59</sup> Old versions of the EDG website can be accessed at [www.archive.org](http://www.archive.org).

enter a yearly rate of return, a capital gains tax rate, and the initial principal, and the offshore calculator would calculate, for onshore and offshore accounts over a 20 year period, the value in the accounts, the difference in the value, and the percentage difference. In an example given in older versions of the EDG website, an investment of \$100,000, with a 15% rate of return and a 20% capital gains tax rate after 20 years onshore would be worth \$964,629; the same investment offshore would be worth \$1,636,654. The 70% gain in value between the offshore and onshore account is solely attributable to avoidance of the capital gains tax. The offshore calculator contained the following disclaimer:

“You may be liable for taxes on foreign investments depending on your country of citizenship and/or residency. EDG strongly recommends consulting a local tax attorney or accountant to determine any tax or legal liabilities you may incur as a result of international investing. EDG also recommends consulting a local tax attorney or accountant before opening any investment accounts in any jurisdiction.”<sup>60</sup>

More recently, Mr. Congdon discussed adding a tax avoidance disclaimer to his website in a series of emails with a potential buyer of EDG. In an April 18, 2005, email to Mr. Congdon, the potential buyer wrote:

“The future for EDG is in protecting the identity of owners of assets, not tax avoidance. I think you have done a great job in maintaining some level of ‘distance’ from the underlying client’s intentions, but the laws are changing quickly, and a greater firewall is required .... I must be very careful not to be associated with any conspiracies to defraud (creditors, courts, etc.) The question is .... is there enough business with people doing it legitimately .... for asset protection from creditors, and from Internet access and identity theft? How would it hurt EDG (or possibly help?) if we placed a disclaimer right on the first page saying that if the client is interested in tax avoidance, they need to go elsewhere?”<sup>61</sup>

Mr. Congdon responded, “I think some of these things would be best discussed in person rather than email - if possible. There is definitely a market for what you are proposing - probably a higher end market than I

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<sup>60</sup> *Id.*

<sup>61</sup> 4/18/05 email from Mr. Congdon to potential buyer of EDG (EDG-EML247-48) (emphasis removed).

may typically service.”<sup>62</sup> In the same exchange the potential buyer noted that identity theft protection “might not be the ultimate use of the client, but it gives a very logical and defensible ‘reason’ for it without having to discuss ‘hiding’ assets (or tax issues...).”<sup>63</sup> On April 21, 2005, the potential buyer wrote, “I think this would be a great time to roll this [identity theft protection] out hard as a new campaign. It gives EDG a great ‘reason’ for why their customers want ‘hidden’ offshore accounts.”<sup>64</sup> Mr. Congdon responded, “i’ve never advertized vis a [vis] identity theft, but it just might work.”<sup>65</sup>

**Offshore Jurisdictions.** Mr. Congdon utilized numerous jurisdictions for establishing offshore structures for his clients, including Antigua, the Bahamas, Belize, the British Virgin Islands, Curacao, Gibraltar, Isle of Man, Panama, Nevis, St. Lucia, Switzerland, and the Turks and Caicos.<sup>66</sup> He encouraged clients to use more than one jurisdiction in an single offshore structure, in part to increase security and privacy. Mr. Congdon recommended different jurisdictions for different purposes. He typically used Belize, the British Virgin Islands, and Nevis for companies; he typically used the Bahamas and Nevis for trusts. Mr. Congdon stated that Nevis is the fastest jurisdiction to incorporate in, Belize is the cheapest, and the British Virgin Islands is preferred by Europeans due to its perceived legitimacy in Europe.

EDG helped establish bank accounts at Barrington Bank in Antigua, Bank of St. Lucia International in St. Lucia, First Curacao International Bank in Curacao, Maerki Baumann in Switzerland, and Close Private Bank in the Isle of Man; it helped establish brokerage accounts at Temple Securities in the Turks and Caicos Islands and Thales Securities in Panama.<sup>67</sup> For setting up trusts and shell corporations, EDG typically used local offshore service companies such as the Bank of Belize in Belize, Commonwealth Trust Services in the British Virgin Islands, and IFG Trust Company in Nevis. For setting up

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.* 4/21/05 11:04am email from Mr. Congdon to potential buyer of EDG (EDG-EML229).

<sup>64</sup> 4/21/05 email from potential buyer of EDG to Mr. Congdon (EDG-EML394-98, at 94).

<sup>65</sup> *Id.*

<sup>66</sup> EDG Website, [www.equitydevelopers.com/order/i01.asp](http://www.equitydevelopers.com/order/i01.asp); Subcommittee interview of Mr. Congdon (6/30/06).

<sup>67</sup> EDG Website, [www.equitydevelopers.com/order/i01.asp](http://www.equitydevelopers.com/order/i01.asp) and multiple emails.

protector trusts in the Isle of Man, Mr. Congdon typically used a company called Global Holdings International.<sup>68</sup>

**Client Control.** Both on the website and in email correspondence, Mr. Congdon sought to reassure prospective clients that regardless of the structures that EDG established for them, the client would retain full control of the funds. The website promises that, “By means of an offshore trust, the founder can remove the potential liability of being the IBC’s owner without sacrificing privacy and complete control of his/her offshore corporation.”<sup>69</sup> He also told potential clients that with respect to bank or brokerage accounts opened for an offshore entity, “you are the only signer on the account and the only one that will have access to the funds in the account,”<sup>70</sup> and “you would be in 100% control.”<sup>71</sup>

Mr. Congdon served as the point of contact between his clients and their trustees, trust protectors, and nominee directors. A client could choose to be the sole director of a shell corporation, in which case he maintained total control of the shell corporation. EDG’s clients, however, did not sacrifice control by choosing a nominee director. Mr. Congdon told the Subcommittee that he can recall only one instance in the history of his company in which a nominee director did not follow the instructions of a client. In that instance, the client had asked the nominee director to sign a sworn affidavit attesting to facts relating to a lawsuit; the director could not attest to the facts and would not commit perjury.<sup>72</sup>

In the case of trustees, Mr. Congdon stated that while a trustee has formal control of a trust, to his knowledge the trustees he chose for his clients never denied a client’s request.<sup>73</sup> For clients that did not want to rely on nominee trustees, Mr. Congdon helped establish trusts in which the client was the sole trustee.<sup>74</sup> Clients who wanted to guarantee complete control over accounts in the name of their shell corporation could instruct the nominee director to make the client the sole signatory on the shell corporation’s accounts.

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<sup>68</sup> Subcommittee interview of Mr. Congdon (6/30/06).

<sup>69</sup> EDG website, [www.equitydevelopers.com/offshore\\_101\\_full.asp](http://www.equitydevelopers.com/offshore_101_full.asp) (viewed 10/31/05).

<sup>70</sup> 3/17/05 email from Mr. Congdon to a potential client (EDG-EML308-09).

<sup>71</sup> 6/3/05 email from Mr. Congdon to a potential client (EDG-EML255-56).

<sup>72</sup> Subcommittee interview of Mr. Congdon (6/30/06).

<sup>73</sup> *Id.*

<sup>74</sup> See, e.g., 2/3/05 email from EDG to client (EDG-EML399).



**Accessing Offshore Assets.** Mr. Congdon also established convenient and confidential means for clients to repatriate the assets deposited into accounts held by the offshore entities. The EDG website describes the process used. Mr. Congdon arranged for the client to become the signatory on the offshore account. Because the account was in the name of the offshore company, “transactions carried out with the account (wire transfers, debit cards, etc.) are all in the IBC’s name, not the client’s name.” But the offshore bank then “issue[d] private Visa/Mastercard debit cards that an account holder may use to withdraw funds from an ATM or to purchase goods and services directly.”<sup>75</sup> Mr. Congdon confirmed to the Subcommittee that clients could use wire transfers, cashiers checks, and debit cards to repatriate funds in this fashion.<sup>76</sup>

Mr. Congdon regularly reassured potential clients that they would have easy and secure access to the funds. For example, he told one client, “There are a couple of ways to bring back funds without anyone connecting them to you,” including “wir[ing] money back” into the country, “cashier’s check,” or “an anonymous ATM card.” He also recommended that this client avoid wiring money to himself, but rather send it directly to a vendor, “for example, if you are buy[ing] a car, have the money wired . . . [to] the car dealership.”<sup>77</sup> He told another client “funds can be pulled out of offshore banks using wire transfers, bank checks, Visa/MC debit cards and cash machine cards. . . . As long as everything is done in the name of the offshore company, then it is private and no one (including Inland Revenue) can get any information about it.”<sup>78</sup>

**Lack of Due Diligence.** Mr. Congdon performed little or no due diligence on his clients. He told the Subcommittee that offshore service providers required no due diligence to set up a trust or a shell corporation. Banks required an identification, a bank reference, and a verification of address in order to establish an account. Mr. Congdon stated that he typically performed rudimentary due diligence only if the client volunteered information that raised a red flag. For instance, he chose not to work with people who volunteered that they were in the

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<sup>75</sup> EDG website, [www.equitydevelopers.com/offshore\\_step3.asp](http://www.equitydevelopers.com/offshore_step3.asp) (viewed 10/31/05).

<sup>76</sup> Subcommittee interview of Mr. Congdon (6/30/06).

<sup>77</sup> 1/17/05 email from Mr. Congdon to a potential client (EDG-EML039-41).

<sup>78</sup> 1/24/05 email from Mr. Congdon to a potential client (EDG-EML053).

pornography or adult entertainment business,<sup>79</sup> and he chose not to do business with clients in countries he considered suspect, such as Iran and Cuba.<sup>80</sup> Mr. Congdon stated that when a potential client volunteered that he was seeking to avoid a judgement, Mr. Congdon advised the potential client to contact a lawyer. Mr. Congdon stated that when a potential client that he had referred to a lawyer returned to EDG and wished to do business, Mr. Congdon accepted the client's word that his actions were legal. He did not independently verify the legality with an attorney.

Mr. Congdon did not express concern about the motives of potential clients. One such client emailed Mr. Congdon, "Hi Sam, [it] appears that my wife has found out about my account and IBC and now wishes to control the money that is in it. ... What are your suggestions regarding this situation?" Mr. Congdon replied, "Does she know the IBC name? If so, you might want to form a new company or just change the name of your existing one. We can also set up another account at a 2nd bank – that certainly wouldn't hurt."<sup>81</sup>

The following email exchange indicates that Mr. Congdon was willing to consider and advise potential clients who volunteered dubious intentions. The exchange also suggests that Mr. Congdon did not always advise potential clients who raised legal issues to contact a lawyer. On January 6, 2005, a potential client wrote:

"I am interested in opening an offshore account to protect my assets from my ex-wife and uncle sam. My ex-wife recently obtained a judgement against me, without my knowledge, and the courts 'stole' a substantial sum from my checking account also without my knowledge. It took me over three months and a lot of stress and legal fees to reverse the judgement and get my money back.

"I am leaning towards simply opening a swiss bank account. ... What does the offshore corporation that you offer provide above the protections offered by swiss banks."

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<sup>79</sup> Subcommittee interview of Mr. Congdon (6/30/06); 6/21/05 email from EDG to potential client (EDG-EML330-33).

<sup>80</sup> Subcommittee interview of Mr. Congdon (6/30/06).

<sup>81</sup> 1/6/05 email to EDG (EDG-EML006).

On the same day that Mr. Congdon received the above email, he replied:

“Thank you for your email. Having an offshore account won’t really protect your assets because everything is still in your personal name. What will protect you from lawsuits and such is an offshore structure. I would [recommend] reading the following page on the EDG site:  
[http://www.equitydevelopers.com/offshore\\_101.asp](http://www.equitydevelopers.com/offshore_101.asp) This will give you a good idea of why a structure (rather than just an account) is the best way to go.”

“Please let me know if you have any additional questions.”

On January 8, 2005, the potential client emailed Mr. Congdon with additional questions:

“The research I’ve done indicates that a Swiss bank account is protected because Switzerland has strict privacy laws. If lawsuits and creditors can’t find my account, they can’t attach it. How does an offshore structure provide more protection than that?”

On the same day, Mr. Congdon replied:

“Swiss accounts aren’t that secure (i don’t [recommend] them) because in order to get one you have to have an apostilled copy of a passport – what that means is that you have to tell your state govt that you are presenting a copy of your passport in Switzerland. That throws whatever privacy someone might have hoped to achieve out the window. Also, having a personal account does not protect you should you get sued and [lose]. Because it is a personal account, you will have to list it as among your assets – it doesn’t matter what Switzerland’s laws are. Having an offshore structure in place prevents this from happening. I would [recommend] reading the following page on the EDG site:  
[http://www.equitydevelopers.com/offshore\\_101.asp](http://www.equitydevelopers.com/offshore_101.asp) This will give you a good idea of why a structure (rather than just an account) is the best way to go.”<sup>82</sup>

**Conclusion.** The accessibility, anonymity, and low cost of online communication are a natural fit for the offshore industry, which trafficks in secrecy and transactions that skirt regulatory oversight and legal

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<sup>82</sup> 1/8/05 email from EDG to potential client (EDG-EML391-9).

requirements. With few resources, no employees, and only nine months prior experience in the industry, Samuel Congdon was able to quickly create and promote an online offshore facilitation business. EDG utilized the internet to provide hundreds of clients, many of relatively modest wealth, with the type of offshore services previously available primarily to high-net-worth individuals. Mr. Congdon rarely met his clients, did not work with their lawyers or accountants, and seldom inquired into their motives. Yet, he helped design and establish the financial structures that enabled his clients to move assets offshore, maintain control of them, obscure their ownership, and conceal their existence from family, courts, creditors, the IRS, and other government regulators. Mr. Congdon willfully remained ignorant of his clients' motives for moving money offshore, and in so doing, he operated in apparent compliance with current law while facilitating potentially illegal activity. There are hundreds of other online businesses like EDG.

#### IV. TURPEN-HOLLIDAY CASE HISTORY: A HOW-TO MANUAL

This case history examines another offshore promoter, Dr. Lawrence Turpen of Reno, Nevada, who spent many years helping U.S. persons move assets offshore. It also examines the actions of one of his clients, Robert F. Holliday, who used a how-to manual provided by Dr. Turpen to create an offshore structure he used to hide his assets. This case demonstrates the ability of U.S. persons to evade taxes by placing their money into offshore accounts. The nearly total compliance of offshore trustees with the wishes of Dr. Turpen and Mr. Holliday allowed the two men to retain full control over the funds they placed offshore. At the same time, they were able to use billing schemes, management consultant agreements, and intermediary corporations in Nevada to distance themselves from the entities and obscure the links between them.

Both men recently pleaded guilty to tax-related charges. In 2004, Dr. Turpen pleaded guilty to a charge of conspiracy to defraud the IRS in connection with his promotion and facilitation of offshore tax evasion.<sup>83</sup> He was sentenced to three years probation and six months home detention with electronic monitoring, and ordered to pay at \$10,000 fine, perform 300 hours of community service, and pay back taxes. Mr. Holliday pleaded guilty to one count of conspiracy to defraud the United States by impeding the IRS.<sup>84</sup> He was sentenced in 2005, to five years probation and 12 months home detention, plus a \$30,000 fine. Both men were interviewed by the Subcommittee.<sup>85</sup>

**Background.** In his plea agreement, Dr. Turpen stated that he became a full-time financial consultant after retiring from a career in dentistry, and in approximately 1987 he began soliciting clients who wanted to move assets offshore.<sup>86</sup> In 1990, he published a book on the subject, “How and Why Americans Go Offshore.”<sup>87</sup> He then held speaking engagements and established a website to advertise his products and services.

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<sup>83</sup> United States v. Turpen, Criminal No. CR-N-04-86-DWH(VPC) (D. Nev.), Plea Agreement (6/23/04)(hereinafter Turpen Plea Agreement).

<sup>84</sup> United States v. Holliday, Criminal No. CR-N-04-0117-DWH-VPC (D. Nev.), Plea Agreement (10/6/04).

<sup>85</sup> Subcommittee interviews of Dr. Turpen (4/6/06) and Mr. Holliday (4/4/06).

<sup>86</sup> Turpen Plea Agreement at 5.

<sup>87</sup> L. Turpen, How and Why Americans Go Offshore, (Haynes & Assoc. 1994) (hereinafter the “Turpen book”).

Dr. Turpen told the Subcommittee that his interest in the offshore industry began in 1969, after a visit to the Isle of Man. On this trip, he inquired about establishing an offshore corporation and spoke with Charles Cain, an administrator for an offshore service provider. Dr. Turpen said that he chose Mr. Cain's firm from a telephone book, concluding that the firm would be more aggressive because it advertised in bold print. Mr. Cain told Dr. Turpen that, although Dr. Turpen would not "own" a company Cain established for him, "if you need something, ask me [as company administrator] and you can have it." This arrangement satisfied Dr. Turpen, and he engaged Mr. Cain to help him form his first offshore company, Intercon Associates, Ltd., to hold his offshore assets.

Throughout his interview with the Subcommittee, Dr. Turpen continually referred to Intercon Associates as "my company." At one point, he caught himself and said "well, not *my* company. I don't know who owned it – a couple of trusts." He said he did not know who the trustees were or who the beneficiaries were, and that such matters were irrelevant to him. What mattered was that, as "managing consultant," he had influence over the day-to-day activities of Intercon and could benefit from the assets without "owning" them.

Dr. Turpen told the Subcommittee that he further educated himself about the process of creating an offshore structure through his own research, in particular by studying the financial arrangements of large corporations with international subsidiaries. He identified the two greatest difficulties in transferring assets offshore to be avoiding "perceived ownership" and finding a trustworthy agent to hold the offshore assets. After studying the various tax havens and secrecy jurisdictions, Dr. Turpen selected a group of eight or nine jurisdictions and cultivated relationships with one or two trust and company administrators in each. Although he declined to identify the offshore service providers he used, he claimed that he carefully vetted them for their trustworthiness and responsiveness.

Dr. Turpen then began speaking at financial seminars as a paid speaker. He first accumulated his notes into brochures, which he would pass out on request. In 1990, he incorporated the brochures into his book, which he sold at the seminars. In his interview with the Subcommittee, Dr. Turpen insisted that his clients who moved assets offshore were predominantly motivated by a desire for privacy from competitors, protection from predatory creditors who filed frivolous lawsuits, and the potential for increased profits through making foreign investments free from stifling U.S. regulations. He claimed that tax avoidance was only a minor motivation of some clients. However, his

book dwells extensively on the use of offshore structures to free U.S. professionals and small businessmen from the burdens of federal income tax.

Dr. Turpen's presentation and book focused on protecting assets by putting them in corporations. Dr. Turpen told his audiences that he could form an offshore corporation, provide nominee officers and signatories on bank accounts, and provide any other such services the client desired.<sup>88</sup> He sold an "ultimate privacy" package for \$4,500, which included a telephone answering service, mail forwarding, and opening and maintenance of bank accounts, all to create the appearance that the corporations were actually operating where the corporate administrator was located.

**Dr. Turpen's Principles for Going Offshore.** According to Dr. Turpen's book, the key to a successful offshore structure was to separate the client from the paper ownership of the client's assets, while retaining the ability to benefit from them:

"It is possible to structure companies in such a way that the U.S. citizen ... is not listed as a member or stockholder. Thus, if that person has an identifiable beneficial interest it is obscure and relatively safe from discovery and claims against it. In many cases, such beneficial interest and any connection to the United States citizen or company is never put in writing or disclosed."<sup>89</sup>

The mechanisms he advocated to "break the connecting factors" between the client and the assets included the formation of an offshore company to "own" the assets and the use of an offshore trust to hold title to the company. Under Dr. Turpen's scheme, the client retained "complete responsibility for the source and application of funds" by signing a "management services" agreement through which the offshore company hired the client as a "management consultant." In this role, the client could issue instructions to the administrators of the offshore entities in the form of "recommendations," but would not sign any checks or other documents. The client would instead request that the corporate administrator sign them.

Dr. Turpen also distanced the U.S. client from the offshore entities by arranging for the client to make all payments of administrator and

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<sup>88</sup> Subcommittee interview of Mr. Holliday (4/4/06).

<sup>89</sup> Turpen book at 40.

similar fees through Dr. Turpen's entities, Intercon Associates, Ltd., and LAD Financial Services. Intercon and LAD contracted with the clients, collected their fees, and then paid, on behalf of the client, all fees necessary to establish the entities. Intercon and LAD also entered into an agreement with each client to receive fees through debits on the client's offshore accounts and, after deducting a "reasonable profit," remitting maintenance fees to the service providers. Dr. Turpen instructed the service providers to send no bills to the client in the United States. These arrangements ensured that the only apparent connection between the offshore and Nevada entities and the client would be the "management services" agreements.

Dr. Turpen recommended that his clients purchase an Isle of Man "hybrid company," which he called the "Cadillac of offshore planning." He explained to the Subcommittee that a hybrid company had two classes of stock: voting shares to be held by the nominal "owners" and associate shares with all rights of distribution, to be held by the client as beneficial owner. Dr. Turpen's book described the purpose and function of this arrangement as follows:

"It is essential that any offshore structure that is designed to withstand an inquisition by any government agency that the United States citizen be totally and completely unlinked from the company. Yet the client needs the assurance of the security of the company assets."

"The proper use of the Hybrid company as described in Appendix I, "Isle of Man: A Business and Tax Haven" is critical to this concept. In essence, we must re-create the individual as a foreigner through the use of this unique company structure. Each individual who works with us is so re-created. The key element of your involvement with the Hybrid is that you are elected as an *associate member* with rights of distribution, but without the right to vote. This takes you out of the control loop but gives you the right to all the assets should the company ever be dissolved. This fact gives you the assurance of the security of any assets you may have assigned or loaned to the company."

"You, as acting CEO [under the previously described management agreement], dealing directly with the selected registered agent, are responsible for the source and application of funds. You alone are responsible for the assets of the company. No one else is given that responsibility and



no disbursements can take place without your approval as the responsible employee.”<sup>90</sup>

Dr. Turpen also recommended including a Nevada corporation in the offshore structure to assist in the transfer of assets from the client to the offshore entities, or what Dr. Turpen called “upstreaming.” He explained that Nevada corporations were useful, because corporation-to-corporation transactions were considered more “normal” and came under less scrutiny than individual-to-corporation transactions. Dr. Turpen incorporated and maintained the Nevada corporations through his domestic company, LAD Financial Services.

Examples of “upstreaming” techniques advocated by Dr. Turpen include inter-corporate billing and inter-corporate loans. In an inter-corporate billing scheme, the Nevada corporation would send a bill for fictitious services to the client’s business. The client’s business would then pay that bill and claim a tax deduction for the amount paid to the Nevada corporation. The offshore corporation would do the same with respect to the Nevada corporation, sending fictitious bills that would exactly equal the funds provided by the client. In the end, these transactions resulted in the transfer of funds from the client’s business, through the Nevada corporation, to the offshore corporation, generating tax deductions at the same time. Alternatively, under an inter-corporate loan scheme, the Nevada company would issue a sham loan to the offshore corporation, transferring the client’s funds without any intention of repayment. In both cases, Dr. Turpen advised clients that, as “managing employees” of both companies, the clients were in a position to set any price or interest rate they liked, and the transaction could be documented as independent in case of a later government inquiry.

**Holliday’s Offshore Structure.** One of the people who attended Dr. Turpen’s seminars and became a client was Robert F. Holliday. Mr. Holliday was a booking agent for musical acts in the 1970s, and after a failed business venture he began looking for another occupation. With the assistance of an acquaintance, he opened an escort service business in Atlanta in 1979, which he operated successfully until 2005. After the first year, he began to handle administrative matters such as advertising and banking. In the early 1990s he expanded the business to Charlotte, North Carolina, where he became the subject of a federal investigation. He pleaded guilty to money laundering charges in 1994, and he ultimately withdrew from the Charlotte market, continuing to do business in Atlanta.

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<sup>90</sup> Turpen book at 203.

Mr. Holliday told the Subcommittee that due to an unsuccessful attempt by the prosecutor in Charlotte to forfeit his residence under the money laundering statute, Mr. Holliday began searching for means to protect his assets should something similar happen in the future. In 1995, he received a flyer in the mail about a seminar in Raleigh, North Carolina, on methods for controlling assets without owning them using Nevada and offshore corporations. He attended the seminar, at which Dr. Lawrence Turpen was a speaker, and purchased Dr. Turpen's book.

According to Mr. Holliday, Dr. Turpen told the approximately 50 people at the Raleigh seminar that his average client paid about \$1,000 a year in income tax after following his plan. Dr. Turpen explained the use of inter-corporate billing schemes to move assets offshore and told his audience that as long as one has the documents to support it, he or she can receive tax deductions for everything. By way of example, according to Mr. Holliday, Dr. Turpen said, "When I was in dentistry, I sent \$60,000 a year to my offshore corporation for advice. The advice never was worth a damn, but at the end of the year I had \$60,000 in my offshore account." In Mr. Holliday's words, they were fictitious deductions, "but that is how you cook the books."

When Mr. Holliday asked how he could trust Dr. Turpen and the offshore service providers to follow his instructions regarding the money, Dr. Turpen cautioned him, "You don't instruct me. You make requests." Dr. Turpen also said that he carefully selected the administrators in Nevada and in the offshore jurisdictions to be professional and responsive to such requests. Mr. Holliday told the Subcommittee that he was willing to take the risk because of his concern that the government might again try to forfeit his assets. According to Mr. Holliday, Dr. Turpen told him that if all he wanted was a Nevada corporation, Dr. Turpen would help him create it. However, for an additional \$6,000, he could establish a "hybrid company" in the Isle of Man. Dr. Turpen told Mr. Holliday that he preferred the Isle of Man because of their secrecy laws and that the Isle of Man administrators "won't even acknowledge you exist."

Dr. Turpen assured Mr. Holliday that it would not be necessary for Mr. Holliday to actually go to Nevada or the offshore jurisdiction to establish or operate his offshore corporations. Mr. Holliday told the Subcommittee that throughout the relationship between the two men, Mr. Holliday never once set foot on the Isle of Man or Nevis. He interacted with persons in those jurisdictions exclusively at a distance.

**The How-To Manual.** Mr. Holliday decided to purchase a package from Dr. Turpen. The package included a hybrid company in

the Isle of Man named “Landmark Planning, Ltd.,” as well as a Nevada corporation, “Business Directions, Inc.” Mr. Holliday gave Dr. Turpen the names for the companies and a check, and Dr. Turpen made all of the other arrangements. Two weeks later, Mr. Holliday received a document entitled “Personal and Confidential International Business Plan, prepared for Landmark Planning, Ltd.” (the “Confidential Plan”). Dr. Turpen referred to the existence of such Confidential Plans at numerous points in his book, explaining that certain details of his offshore strategies could not be fully explained in a book, but were provided only to his clients in such individualized plans.

The Confidential Plan functioned as a how-to manual for going offshore. It indicated that tax avoidance, rather than asset protection, was the focus of the offshore structure: “The primary service of Intercon Associates is to operate foreign companies on behalf of our clients in a way that will enable them to effectively do business worldwide from a tax free jurisdiction.” The foundation of the Confidential Plan was to keep effective control over the offshore assets of the client notwithstanding the formality of placing paper ownership in others. The Plan stated that point one of “Our Eight Point Service Commitment” was:

“5.1. Number 1. ... Intercon Associates will undertake to create a company structure and to offer you the responsible position of “Managing Consultant.” We instruct the directors of the company to appoint you to this position of responsibility and to give you complete responsibility with regard to source and application of funds ....”

“5.3. It should be stressed that you may be the only employee of the company and the directors by tradition and custom will ratify your decisions and support your actions. You can count on this if they are assured that your actions are legal and will not cause harm to any individual connected with the company administration.”

Point Four explained how this de facto control over company assets would be concealed by avoiding any paper evidence of a connection between the client and the company:

“5.9. Number 4. We create a definite BREAK IN THE CONNECTING FACTORS between you and the company by retaining unto Intercon Associates the responsibility for paying the fees to the country of company domicile along with the annual standing charges as long as our association

stays active and current. This means that you as a citizen of the United States is never in a position to write a check to the foreign government or administrator.”

“5.10. ... With the structural plan that is organized by Intercon these fees are never raised to you directly. In fact, the address used on the company documents is in no way linked to you, the company is not organized by you and your role is reduced in documented form to that of a responsible consultant ....”

“5.12. As a matter of fact, as a rule signature power on the company bank account is held by the company administrator and the directors, together with the designated bank officer. They will respond to your direction as the responsible employee and will act on your requests in a timely manner. Additionally, for your security, the board will allow you to set up control codes with the bank that gives you effective oversight of the accounts. These control codes can be explained in detail in our personal consultations. It therefore is not necessary to disclose your signature on a foreign account.”

The Confidential Plan at several points reassured Mr. Holliday that, even though he was not the “owner” of the hybrid company on paper, no one would interfere with his use of company assets:

“10.4. ... As a consultant to the company our client makes recommendations that are submitted to the board of directors or to the company administrators for action. His position of responsibility will be honored and his recommendations will be activated. But, in no case will there be a signed document to require this action ....”

“11.4. ... Aside from our concern that your activities are legal, details of your business activity would be of no concern of ours. We make no effort to inquire about what you do. We are only concerned with the structure and its ability to serve your needs ....”

“13.14. You as the CEO, dealing directly with the selected registered agent, are responsible for the source and application of funds. You alone are responsible for the assets of the company. No one else is given that responsibility and

no disbursements can take place without your approval as the responsible employee ....”

“26.4. ... There is no need to be concerned about the proper allocation or the disbursement of funds. The board has given you that authority and you should realize they will ratify your decisions.”

The Confidential Plan referred to Landmark Planning, Ltd., as Mr. Holliday’s “piggy bank.”<sup>91</sup> In fact, while it offered to set up a personal account for him at the offshore bank, it noted that “most of our clients find that they do not need a personal account, because of the easy access to company funds.”<sup>92</sup>

**Moving Funds Offshore.** Once his structure was in place, Mr. Holliday began using it to move money offshore. The Confidential Plan suggested a number of ways to do so, including the method chosen by Mr. Holliday: transferring funds in payment for fictitious “services” allegedly performed by the offshore company. The Confidential Plan suggested that, as a businessman, Mr. Holliday had “every right to pay any bill you receive and the foreign company has every right to charge you whatever it wishes or has contracted with you for its services. So, in the ordinary course of business much money can be moved from one country to another. If there is a possibility of an audit on this side, it is prudent to create the proper paperwork to document the payment. To pay the bill, you simply write a check to the company.”<sup>93</sup>

Mr. Holliday told the Subcommittee that no real “services” were performed by the offshore company to justify the payments. Indeed, the company had no personnel to perform any such services. He gave an example of one such fabricated fee-for-service transaction, designed to create paperwork supporting a payment of \$45,000 to Landmark Planning. In that instance Mr. Holliday bought a book on the premium-rate telephone business, used for adult chat lines, psychics, and other similar services. He used the book to prepare a several page “report” on the business, and sent the draft report through Dr. Turpen to the administrator of the Isle of Man company to type up on Landmark Planning letterhead. The report was then sent back to Mr. Holliday in exchange for the \$45,000. The report from Landmark Planning was then

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<sup>91</sup> Personal and Confidential International Business Plan prepared for Landmark Planning, Ltd., (“Confidential Plan”), sections 12.4, 13.3, 14.5.

<sup>92</sup> Confidential Plan, section 26.3.

<sup>93</sup> Confidential Plan, section 7.12.

given to the tax return preparer to support a tax deduction for \$45,000. As a result, Mr. Holliday was able to move \$45,000 of untaxed income to his Isle of Man “piggy bank,” Landmark Planning.

Mr. Holliday created paperwork for many similar fictitious transactions. He told the Subcommittee that he paid Landmark Planning for “real estate investment advice.” Among the documents made available to the Subcommittee by Mr. Holliday were research agreements and management agreements under which Landmark Planning undertook to provide services for two business feasibility studies totaling \$450,000, for real estate management services for \$200,000, for an extension of the real estate management agreement for another \$200,000, and for the premium-rate telephone business report for \$45,000. According to Mr. Holliday, all these agreements, and others, were fabricated to justify the transfer of untaxed funds to the Isle of Man.

**Accessing the Offshore Funds.** Once the money was offshore, the Confidential Plan offered several ways of accessing it.<sup>94</sup> The means included obtaining loans from the offshore company, using a credit card drawing on the offshore account, obtaining payments from the offshore company for services (a method with the disadvantage of being taxable), and Dr. Turpen’s “personal favorite,” using the offshore company to pay the client’s bills.

Mr. Holliday accessed most of his offshore funds by “borrowing” the funds back from Landmark Planning. Each time he obtained funds, Dr. Turpen’s office would document the transaction by preparing a promissory note. Typically the note would be signed on behalf of a Nevada corporation as the borrower, because Dr. Turpen said it was best to keep the transactions between corporations, distancing the client from the assets. Thus, when Mr. Holliday wanted to use Landmark Planning funds to purchase a real estate investment in the United States, he would create a Nevada corporation to purchase the real estate, and that corporation would “borrow” the funds from Landmark Planning. The funds would typically be wired from the Isle of Man account to the Nevada corporation that was going to buy the property. Dr. Turpen created a number of Nevada corporations for Mr. Holliday for this

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<sup>94</sup> The Confidential Plan actually addressed the subject of spending the offshore money even before it explained how to get the funds out of the country. These suggestions begin with the observation, in section 7.1: “One of the first questions we are asked is ‘if this company is set up, how do we get money back so we can spend it?’”

purpose.<sup>95</sup> If a property was later sold, the funds could be returned to Landmark Planning in repayment of the “loan” and could later be used on another transaction. Mr. Holliday told the Subcommittee that eventually the transactions became so complex that he had no idea how much was paid back to Landmark Planning, but he believed some amount was returned to the offshore entity in this way.

Dr. Turpen also secured a credit card account at Global Bank of Commerce Limited in Antigua in the name of Landmark Planning, Ltd. The bank issued a card to Mr. Holliday with his own name on it. Mr. Holliday used the card many times between 1995 and October 2002. The billing statements from this card were faxed to the Isle of Man for payment from a Landmark Planning account at Royal Bank of Canada (later moved to Royal Bank of Scotland). Mr. Holliday said that the offshore service providers always secured his approval before paying these charges. As it was explained to Mr. Holliday, this arrangement ensured that his Social Security number was nowhere involved, and his use of the card would be absolutely secret. Unfortunately for Mr. Holliday, the IRS developed a way to access the records from computers in the United States. He told the Subcommittee that he believed the IRS discovered his offshore activity through the IRS Offshore Credit Card Project and then began an audit of his returns.

Mr. Holliday made available to the Subcommittee copies of the credit card records obtained by the IRS, showing that he spent the following amounts through the Global Bank of Commerce card:

1999	\$ 51,816
2000	\$ 30,657
2001	\$ 91,513
2002	\$ 70,740

Mr. Holliday also had access to a U.S. brokerage account at Merrill Lynch, which the Isle of Man administrators opened in the name of Landmark Planning, Ltd. He had complete control over the investments in this account but felt that his access was somewhat inconvenient, in that he had to send trading instructions to Isle of Man administrators who then sent them to the U.S. broker. At some point, Dr. Turpen called Mr. Holliday and offered to establish another offshore account for him, saying “if you want a back-up, I can get you a Nevis package.” Mr. Holliday agreed, and Dr. Turpen created a company in Nevis named

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<sup>95</sup> According to Mr. Holliday, Nevada was always the jurisdiction of choice for such corporations, because they allowed bearer shares (which do not disclose the name of the owner), had no state income tax, and would not share information with the IRS.

“Select Investments.” Mr. Holliday told the Subcommittee he believed the company may have been held by a trust, because he remembered being called a “trust protector” in that arrangement. The Nevis company opened an E-trade brokerage account in the “Select Investments” name and gave Holliday the password, so that he could directly trade on the account. He also received a credit card from Leadenhall Bank & Trust Co. in the Bahamas as part of the Nevis package. This card worked in the same way as the card from Global Bank of Commerce.

Mr. Holliday told the Subcommittee that at some point after he started using Landmark Planning, Ltd., he went to another offshore seminar in Nevada offered by Laughlin International, to determine whether Dr. Turpen was being “straight” with him. Mr. Holliday characterized the seminar as “not in any real agreement” with what Dr. Turpen taught. At the event he met with two of the presenters, both lawyers from San Diego, and showed them Dr. Turpen’s plan. They said that his arrangements with Dr. Turpen were illegal and offered to show him a better way. They said “we do it right in the Cook Islands” and offered to establish a structure for him for a \$50,000 fee. However, Mr. Holliday told the Subcommittee that he had no interest in spending that much money, and he decided to stick with Dr. Turpen, as everything was “working so far.”

**Controlling the Offshore Assets.** Mr. Holliday told the Subcommittee that he did not select the persons who established and administered his corporations, but relied on Dr. Turpen to choose the offshore service providers. Dr. Turpen explained that clients could feel comfortable entrusting their assets to the offshore service providers selected by him, because he only recommended trustworthy administrators. He also suggested that, if a trust administrator were ever to act in a dishonest manner, that administrator would be forced out of business by the regulators and other administrators.

When asked specifically about the willingness of offshore trust and corporate administrators to do what the client wanted with trust and corporate assets, Dr. Turpen cited only two instances where such administrators had declined to follow instructions: one in which the client wanted to do something illegal (such as purchase cocaine) and one in which a “duress clause” in a trust instrument directed the trustee not to follow instructions given under duress. He insisted that the trust and corporate administrators he used maintained their independence in controlling the trusts and corporations of his clients, but was unable to cite a single instance in his more than 30 years of experience when the client’s legal instructions, not given under duress, were not followed.



Mr. Holliday could only remember one instance when the corporate administrator in the Isle of Man declined to carry out a requested transaction. In that instance he wanted to conduct a British pound transaction through a bank account that was only authorized to deal in U.S. dollars. His impression was that they were careful not to violate their own laws, but that their job was to otherwise approve his "requests." According to Mr. Holliday, "I was the puppet master."

Mr. Holliday did not know any of the people who served as officers and directors of his companies, all of whom were selected by Dr. Turpen. He did, however, have dealings with some of them over the telephone and by fax, when he would pass along his "requests" for their approval. He understood that, under Dr. Turpen's plan, he had been designated "management consultant" for the hybrid company, giving them justification to act on his "advice." Initially he dealt with an administrator in Ireland named John Fitzgerald, of Fitzgerald and Associates. However, in 1999, he became disenchanted with Mr. Fitzgerald's company as administrator, due to two \$30,000 errors involving misplaced funds. In both instances, Mr. Fitzgerald found the funds and restored them to Landmark Planning, but Mr. Holliday concluded that Landmark Planning was not getting the attention it deserved.

The Confidential Plan made provision for just this situation:

"11.3. Sometimes it may be in your best interest to move the administration of the affairs of "Landmark Planning Ltd" to another administrator. Since we meet with these individual companies on a regular basis, we are in a better position to see that need and to act in your behalf. This is never done without your knowledge or consent. It is most often done because of a client's dissatisfaction with the present administration or the costs involved. Because of our extensive network of affiliated agents we are always able to find an agent or administrator that will interact in a positive way with the client."

Mr. Holliday wrote Dr. Turpen a letter addressed to Corporate Office Services in Nevada, requesting Mr. Fitzgerald's removal,<sup>96</sup> and Dr. Turpen immediately wrote to Mr. Fitzgerald<sup>97</sup> and to Reg Newton of

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<sup>96</sup> 2/22/99 letter from Mr. Holliday to Dr. Turpen.

<sup>97</sup> 2/22/99 letter from Dr. Turpen to Mr. Fitzgerald.

Meridian Management in the Isle of Man<sup>98</sup> directing the transfer of the administrator duties to Meridian. There is no indication in any of these letters that any person other than Mr. Holliday was consulted about this decision regarding administration of the hybrid company that was allegedly owned by someone else.

According to Mr. Holliday, apart from the incident with Mr. Fitzgerald, the administrators were responsive to every “request” for action from him. He told the Subcommittee that the Isle of Man administrators preferred to have a letter or fax in the file to document his requests, while Fitzgerald and Associates in Ireland preferred to act on telephone requests, telling him at one point “the less in writing the better.” He said that no trustee or administrator ever hesitated to give back funds he had placed in Landmark Planning, and the administrators would often wire funds as he directed even before receiving the signed promissory note. The administrators also exercised no authority over the brokerage accounts once they were established, leaving it to him to conduct all trades. They encouraged Mr. Holliday not to trade on margin, but did not prevent him from doing so. He said that the credit card accounts were also completely at his disposal. The bills were sent to the corporate administrators, but they would not pay the bills without consulting him first.

**Keeping Records of Offshore Activity.** The Confidential Plan contained several cautions about maintaining secrecy with respect to company documents:

“26.1. As soon as you receive them, “Landmark Planning Ltd” documents can be made available at our office in London. If it is your desire we can see that a second set be sent to your address in the United States. Once again, we suggest that you take special care of these, since disclosure of them would be evidence that you know more about the company than you would want to disclose if asked by anyone intent on invading your privacy. Remember from a practical standpoint you are a consultant with specific responsibilities. You own no stock and are not a director. Our service has made it possible for you to be completely un-linked to the company.”

“26.2. The document you are now reading contains a lot of substantial information. Guard it carefully. This is not for public consumption and it would not serve your interests well

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<sup>98</sup> 2/23/99 letter from Dr. Turpen to Meridian Management.

to “pass it around”. It is our suggestion that after you review this document as well as any formal documentation that is sent along with the company organization, and that you then return all of it to our office in London where it can be safely stored in your behalf ....”

“27.2. In addition, we will be happy to instruct the London office to store any records that you feel are sensitive and would rather not keep in the states. Clearly, any client should recognize that his best defense is that he is an employee or a consultant with the company and has no knowledge of all the company details. So keeping any records in the states should be done with care ....”

“29.1. Each of our registered agents has agreed to send a computer generated quarterly statement of company account activity directly to your address, at the same time that he pays Intercon the “Landmark Planning Ltd” quarterly fees. Any records that are sent to London will be forwarded to you by our staff there and will not be entered into our computers. (One less place for the inquiring mind to look for the data). You need to tell the administrator where you want the records sent. You should read these records and destroy them. It would not serve your best interests for them to be found in your possession.”

Ironically, Dr. Turpen did not follow his own advice. In approximately 2003, Mr. Holliday received a call from Dr. Turpen instructing him to open a Hushmail (encrypted email) account and to contact Dr. Turpen through that account. When Mr. Holliday did so, Dr. Turpen informed him that the IRS had executed a search warrant for his offices in Nevada and taken all of his records, including the hard drives from his computers. Mr. Holliday asked if this material contained any records with his name on them, and Dr. Turpen replied that there were numerous such documents. Mr. Holliday told the Subcommittee that he responded to the effect of, “You idiot! That is exactly what you told me never to do.”

Mr. Holliday told the Subcommittee that, during the years he operated under Dr. Turpen’s plan, Dr. Turpen referred him to an accountant to have returns prepared for the Nevada corporations. Mr. Holliday supplied the accountant with all the false documents that had been prepared to document the “business” purpose of the transfers of funds to Landmark Planning in the Isle of Man. The accountant based

the returns on those false documents, and the resulting false returns ultimately led to Mr. Holliday's conspiracy conviction.

**Conclusion.** Dr. Turpen and Mr. Holliday took advantage of some of the most problematic features of the current offshore industry. They used the secrecy laws of offshore jurisdictions to conceal ownership of the offshore entities they established, allowing them to avoid payment of taxes for years. At the same time, they were able to maintain total control through a group of compliant offshore service providers. The two men were only apprehended because of the carelessness of Dr. Turpen in keeping records onshore. If the records had been themselves secreted offshore, the two men might still be cheating the federal taxpayer today.

## V. GREAVES-NEAL CASE HISTORY: DIVERTING U.S. BUSINESS INCOME OFFSHORE

This case study examines the offshore activities of Kurt Greaves, a Michigan businessman, who worked with Terry Neal, a prominent offshore promoter based in Oregon. Mr. Neal designed and implemented an offshore structure into which Mr. Greaves placed between \$400,000 and \$500,000 in untaxed business income. With the help of Mr. Neal, Mr. Greaves established corporations in Canada, Nevis, and Nevada, to which he transferred this business income and other assets using a sham mortgage, fictitious service contracts, and a phony insurance policy. While Mr. Neal assured Mr. Greaves that all of the arrangements were legal, after a few years Mr. Greaves learned that they were not, and he began cooperating with federal authorities.

On April 13, 2004, both Mr. Neal and Mr. Greaves pleaded guilty to federal tax evasion charges. Mr. Greaves pleaded guilty to one count of filing a fraudulent tax return<sup>99</sup> and was sentenced to two years of probation and a \$30,000 fine.<sup>100</sup> Mr. Neal pleaded guilty to conspiracy to defraud the United States by impeding the IRS.<sup>101</sup> He was sentenced to five years in prison followed by three years probation and a \$50,000 fine.<sup>102</sup> The information in this case history is based on a Subcommittee interview of Mr. Greaves, documents he provided, and legal pleadings in the cases of United States v. Kurt P. Greaves<sup>103</sup> and United States v. Terry L. Neal, et al.<sup>104</sup>

**Background.** Kurt Greaves is the owner and president of Mr. Roof, the largest residential roofing company in Michigan. Mr. Greaves told the Subcommittee that in the winter of 1998, while flying home from a vacation in the Carribean, he saw an advertisement by Terry Neal, a prominent offshore promoter, about the benefits of moving

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<sup>99</sup> Press Release, Department of Justice, "Two Businessmen Plead Guilty to Tax Fraud in Offshore Credit Card Scheme," 4/13/04.

<sup>100</sup> United States v. Greaves, Criminal No. 2:04-cr-80274-AJT-RSW-ALL (E.D. Mich. 2004), Criminal Docket.

<sup>101</sup> Press Release, Department of Justice, "Two Promoters of Offshore Tax Fraud Scheme Plead Guilty in Oregon," 4/13/04.

<sup>102</sup> United States v. Neal, Criminal No. CR 03-35-HA (D. Oregon 2003), Criminal Docket.

<sup>103</sup> Criminal No. 2:04-cr-80274-AJT-RSW-ALL (E.D. Mich. 2004).

<sup>104</sup> Criminal No. CR 03-35-HA (D. Oregon 2003).

money offshore. Mr. Greaves showed the advertisement to his father, the founder of Mr. Roof, and asked him to contact Mr. Neal.<sup>105</sup>

Mr. Neal was the operator of three companies involved with promoting, creating, and managing offshore tax shelters. Offshore Corporate Services, Inc. (OCS) operated out of Portland, Oregon and Carson City, Nevada.<sup>106</sup> It established foreign and domestic corporations for Mr. Neal's clients, appointed nominee directors, and opened bank and brokerage accounts.<sup>107</sup> OCS was later renamed Laughlin International, Inc.<sup>108</sup> The second company, Nevis American Trust Company (NATCO) was based in Nevis and created offshore corporations for Mr. Neal's clients.<sup>109</sup> NATCO also provided nominee directors and established bank and securities accounts for these offshore corporations.<sup>110</sup> The third company, Offshore Consulting Services, Inc., assisted Mr. Neal's clients in developing their offshore plans. Both Offshore Corporate Services, Inc. and Offshore Consulting Services, Inc. operated out of the same Portland, Oregon office and used the same acronym, OCS.

**Sales Pitch in Portland.** Mr. Neal invited Mr. Greaves and his father to visit his office in Portland, Oregon in late 1998 or early 1999. Mr. Greaves and his father traveled to Portland, and Mr. Neal's colleague, Aaron Young, picked them up at the Portland airport. He drove them to Pumpkin Ridge Country Club for lunch, where they were joined by Mr. Neal and his son-in-law Lee Morgan. According to Mr. Greaves, Mr. Neal led the discussions, Mr. Young acted as his "sidekick," and Mr. Morgan held himself out to be their lawyer. The discussion at lunch focused on the general benefits and procedure of moving assets offshore. Mr. Neal assured Mr. Greaves that his business practices were completely legitimate.<sup>111</sup>

After lunch the party drove to Mr. Neal's home and continued their meeting. Mr. Greaves told the Subcommittee that he led Mr. Neal to believe that he was very wealthy, and used his perceived wealth to

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<sup>105</sup> Subcommittee interview of Kurt Greaves (4/14/06).

<sup>106</sup> United States v. Neal, Criminal No. CR 03-35-HA (D. Oregon 2003), Superseding Indictment at 2.

<sup>107</sup> Id.

<sup>108</sup> Id.

<sup>109</sup> Id.

<sup>110</sup> Id.

<sup>111</sup> Subcommittee interview of Mr. Greaves (4/14/06).

leverage Mr. Neal into describing the offshore business in great detail. Mr. Neal explained that his companies, OCS and NATCO, could help Mr. Greaves establish offshore corporations to hold his assets, while ensuring that he would not be listed as an owner of the corporations. Mr. Neal assured him that this arrangement was perfectly legal. Mr. Neal also said that his company had hundreds of customers and millions of dollars under management and mentioned that several celebrities were his clients.

Mr. Greaves stated that their discussion of offshore strategies at first focused on asset protection, but as the discussion progressed, tax benefits were raised. By end of day, they were discussing specific structures, and Mr. Neal wanted to know everything about the Greaves family finances so they could design an appropriate plan. Mr. Greaves had the impression that Mr. Neal would design the offshore plan, and that Mr. Young would help implement it.

Mr. Greaves and his father left Portland that evening, having spent, in his estimation, seven or eight hours in meetings with Mr. Neal and his team. They agreed to follow up over the telephone. Mr. Greaves told the Subcommittee that he felt the benefits of moving his assets offshore sounded “too good to be true.”<sup>112</sup>

**Offshore Strategy.** On July 14, 1999, after further telephone contacts, Mr. Greaves sent a \$20,000 fee to Mr. Neal by check payable to “OCS, INC.”<sup>113</sup> In return, Mr. Neal’s company sent a written offshore strategy to Mr. Greaves with recommendations on establishing offshore entities. Mr. Greaves considered consulting a lawyer or an accountant before investing in the strategy, but he said that Mr. Neal told him that most lawyers and accountants would not be familiar with the type of offshore strategy they had devised. Mr. Greaves told the Subcommittee that Mr. Neal assured him, “There’s nothing you can’t ask us, we’re one-hundred percent legit.”<sup>114</sup>

To carry out the strategy, Mr. Greaves formed five or six corporations with Offshore Corporate Services.<sup>115</sup> The corporations were formed in Canada, Nevis, and in Nevada, and were owned on paper by Nevis American Trust Co. Mr. Greaves said that one corporation

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<sup>112</sup> *Id.*

<sup>113</sup> Check dated 7/14/99 (FR031771). It is not clear whether Mr. Neal processed this check through Offshore Corporate Services, Inc., or Offshore Consulting Services, Inc.

<sup>114</sup> Subcommittee interview of Mr. Greaves (4/14/06).

<sup>115</sup> 7/14/99 letter from Mr. Neal to Mr. Greaves (FR031784).

held his mortgage, one corporation held his credit card, and one corporation was used to facilitate an insurance premium scheme; one corporation, named Midwest Consultants, was used to pay for services in the United States. There were one or two additional corporations, the purpose of which Mr. Greaves could not recall. Mr. Greaves paid Mr. Neal's company approximately \$2,000 in fees to establish each corporation.

Mr. Neal instructed Mr. Greaves to open bank accounts for his corporations at Mr. Neal's private bank, Exchange Bank and Trust, a shell operation administered in Nevis by NATCO.<sup>116</sup> When Mr. Greaves later tried to withdraw money from his account at Mr. Neal's private bank, he learned that it functioned primarily as a correspondent bank account at a Canadian bank. Mr. Neal's shell bank pooled all of its depositors' money in one account at the Canadian bank under the name of Exchange Bank and Trust. Mr. Greaves told the Subcommittee that on one occasion Mr. Greaves noticed a \$17,000 discrepancy, to his detriment, between his records and the records of Mr. Neal's shell bank.

**Client Control.** While NATCO appeared to own the companies that Mr. Neal helped Mr. Greaves establish, Mr. Greaves actually controlled the companies. He explained that NATCO appointed Mr. Greaves to a position of "Business Consultant" in the companies, and when he wanted any action taken by his companies, he called Mr. Neal's office in Portland. The Portland office then forwarded his instructions to one of Mr. Neal's employees in St. Kitts. According to Mr. Greaves, his instructions were followed on every occasion. Though corporate decisions were ostensibly made by nominee officers and directors, Mr. Greaves stated, "if I wanted to do something, it would happen."<sup>117</sup>

**Moving Assets Offshore.** Mr. Neal developed several schemes to help Mr. Greaves move his assets offshore. In one scheme that combined asset protection and tax benefits, Mr. Greaves took out a mortgage on his home through an ostensibly independent Canadian corporation that he in fact controlled. No money was actually borrowed, but the mortgage encumbered Mr. Greaves's property and thereby rendered it immune from asset seizure. Each tax-deductible interest payment to the company on the "mortgage" moved money into foreign bank accounts that Mr. Greaves controlled.<sup>118</sup>

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<sup>116</sup> Exchange Bank and Trust, Inc. document (FR031787-92).

<sup>117</sup> Subcommittee interview of Mr. Greaves (4/14/06).

<sup>118</sup> *Id.* See also 9/5/02 letter from Benjamin Knaupp of Benjamin D. Knaupp, P.C., Business, Tax, and International Legal Advisors to Mr. Greaves (FR031877) and 9/13/02 letter from Marcus O'Sullivan of Amicus Neighborhood Law Centre in Victoria, British Columbia to



Mr. Greaves described another scheme that used a Nevada corporation called Midwest Consultants. Mr. Greaves paid about \$150,000 to the company for “consulting services,” which he listed as a tax deduction. Then Midwest Consultants sent the money to a company in Nevis controlled by Mr. Greaves, and Midwest Consultants deducted the expense as well. Mr. Greaves routinely moved money in this way, sending it offshore through a U.S. company he controlled for phony business expenses such as consulting or accounting services.

A third scheme devised by Mr. Neal and utilized by Mr. Greaves involved a phony insurance company. Mr. Greaves wired \$230,000 to a company controlled by Mr. Neal called Sovereign Life & Casualty Limited for “Business Casualty and Fidelity Insurance,” which purported to insure against a variety of business losses.<sup>119</sup> The policy was phony, and Sovereign Life & Casualty Limited did not provide any actual insurance coverage. A Nevis company controlled by Mr. Greaves, called McLaren Investment, Inc., entered into an indemnity agreement with Sovereign Life & Casualty Limited and assumed all of its liabilities under the policy.<sup>120</sup> The money that Mr. Greaves wired to the phony insurance company then went into an offshore account that he controlled.

**Offshore Secrecy.** Mr. Morgan advised Mr. Greaves to authorize the movement of his corporate files offshore in order to provide additional asset protection. On September 6, 2000, Mr. Morgan wrote to Mr. Greaves and his wife and explained the purpose of moving corporate files offshore:

“We have completed our corporate consulting services from within the United States and recommend that you instruct us to move your file to St. Kitts & Nevis where our work product and mutual correspondence will be secure in accordance with the Privacy and Confidentiality Act of St. Kitts & Nevis.

“Under U.S. law, a litigant can subpoena files from our U.S. office and we could be required to provide copies of the contents of such files. Enclosed is an Acknowledgment and Indemnification Agreement wherein you relieve us from

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Mr. Greaves (FR031878).

<sup>119</sup> Sovereign Life & Casualty, Ltd. Approval Memorandum (FR031781-82); Sovereign Life & Casualty, Ltd. insurance policy (FR031860-67).

<sup>120</sup> Sovereign Life & Casualty document, “Indemnity Agreement” (FR031858-59).

responsibility to maintain such files in the U.S. and instruct us to move documents, legal work product, letters, memos, records, research, etc. to a safe haven beyond the grasp of predators.”<sup>121</sup>

**Moving Money Back.** Mr. Greaves primarily repatriated his money through credit cards and loans. Several Greaves family members received an “Infinity Global Axxess” Mastercard issued by Leadenhall Bank & Trust Company Limited in the Bahamas.<sup>122</sup> In addition to the card-holder’s name, each card also listed the name of Nevis American Trust Co. The credit cards were secured and required the card holder to deposit in escrow an amount equal to a little less than one-and-a-half times the card’s credit limit. Mr. Greaves deposited the minimum escrow, \$33,000, in order to receive a \$25,000 credit limit.<sup>123</sup> The escrow account was not used to pay charges on the credit account; it was just held by the bank to protect itself in case any charges went unpaid. Mr. Greaves paid his credit card balance by electronically transferring the funds from his companies’ offshore accounts at Mr. Neal’s bank in Nevis. Account records show that Mr. Greaves paid a significant number of ordinary living expenses in this way.<sup>124</sup>

**Offshore Jurisdictions.** According to Mr. Greaves, Mr. Neal preferred to utilize Nevis as an offshore jurisdiction because of the sophistication of its banking services, its lack of regulation, and its strong secrecy laws. Mr. Neal told Mr. Greaves that “the IRS has no pull there.”<sup>125</sup> Mr. Neal also told Mr. Greaves that there were advantages to the geography of St. Kitts and Nevis. The two islands in the nation of St. Kitts and Nevis are separated by a small channel. The islands are so close together that walkie-talkies can be used to communicate between them. According to Mr. Greaves, Mr. Neal’s bank had operations on both islands, with his main office on Nevis near the island’s main docks. In the event of an official raid on the bank, Mr. Greaves was told that the bank’s files could be quickly moved to St. Kitts by boat.

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<sup>121</sup> See 9/6/00 letter from Lee E. Morgan to Kurt Greaves and Grace-Anne Greaves (FR031815).

<sup>122</sup> Subcommittee interview of Mr. Greaves (4/14/06). See also photocopies of the credit cards in question (FR031884-95).

<sup>123</sup> See Global Axxess Mastercard Schedule of Fees (FR031893).

<sup>124</sup> Leadenhall Bank & Trust account statements from 2000 and 2002 (FR031896-901).

<sup>125</sup> Subcommittee interview of Mr. Greaves (4/14/06).

In 2002, Mr. Neal began to move his operations to Grenada in response to the Patriot Act. Mr. Greaves' father received a letter that explained this move:

"Now, the so-called 'Patriot Act' is interrupting offshore banking activities. A sample paragraph from a letter from SKNA bank (the largest commercial bank in the West Indies) points out this problem: 'We advise that as a result of the stringent requirements imposed by our USA correspondent banks and other banking partners, and in particular the requirements of the USA Patriot Act passed by the United States Government, our Bank has been forced to discontinue providing banking services to offshore companies.'"<sup>126</sup>

Mr. Greaves believes that his accounts were transferred to Granada at about this time. Mr. Greaves was also told that Mr. Neal decided to move his operation to Grenada because he had a strong relationship with the nation's Prime Minister. Mr. Greaves told the Subcommittee that he was assured his assets would be "untouchable" in Grenada.<sup>127</sup>

**Suspicious.** Mr. Greaves told the Subcommittee that, despite assurances from Mr. Neal, he had his suspicions about the legitimacy of the offshore system he had established. His suspicions were heightened when he received documents from Mr. Neal that were stamped with the phrase "Read and Destroy." While on a cruise to the Caribbean, Mr. Greaves decided to visit NATCO's office in Nevis. The cruise docked in St. Kitts. Mr. Greaves hired a small boat to take him across the small channel to Nevis. In Nevis he hired a cab to find the office. Mr. Greaves said that he quickly found a 30-by-40 foot stone building with a small sign reading "Nevis American Trust." The building was easy to find, as it was right on the beach and close to the docks where he landed. He knocked on the door, and a woman answered and stepped out to talk with him. He recognized her voice from his regular telephone calls to the company. He introduced himself, stated that he was a client, and asked to see the office. She would not let him in, and stated that meetings were by appointment only.

**Cooperating.** Mr. Greaves cooperated with the Criminal Division of the IRS and with the Office of the United States Attorney in their investigations of Mr. Neal's operation. He told the Subcommittee that he withdrew his money from his offshore structures so that Mr. Neal

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<sup>126</sup> Letter to Herbert Greaves, undated, (FR031883).

<sup>127</sup> Subcommittee interview of Mr. Greaves (4/14/06).

could not steal it once he found out that Mr. Greaves was cooperating. Mr. Greaves stated that Mr. Neal was reluctant to allow Mr. Greaves to withdraw a large amount of money all at once, but Mr. Greaves was able to prevail upon him to do so by saying that the money was needed immediately for a business deal, and that he would soon reinvest even more money offshore. For a while Mr. Neal didn't realize that Mr. Greaves was cooperating with federal authorities, and he continued contacting Mr. Greaves and sending him documents. Mr. Greaves said that he and his father had about \$60,000 combined at NATCO when Mr. Neal realized that they were cooperating with authorities; they were unable to withdraw that money.<sup>128</sup>

**Conclusion.** Under the guidance of Terry Neal, a prominent offshore promoter, Kurt Greaves used a variety of sham transactions to move between \$400,000 and \$500,000 of untaxed business income offshore without giving up the ability to access and manage those funds. Mr. Greaves's experience demonstrates that offshore service providers can enable a client to retain complete control over assets that are ostensibly owned by independent entities. Mr. Greaves' providers even fabricated documents to support fictitious tax deductions, rendering suspect the legitimacy of documents produced by offshore providers based in tax havens. Mr. Neal's operation promoted, and Mr. Greaves relied on, the fiction that, for legal and tax purposes, there can be a distinction between ownership and control. This case history is also notable for Mr. Greaves' use of Nevada corporations as an additional layer of separation between him and his offshore assets. Many offshore promoters take advantage of Nevada's policy of collecting very little information on the people behind the businesses that incorporate in the state.

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<sup>128</sup> Id.

## VI. ANDERSON CASE HISTORY: HIDING OFFSHORE OWNERSHIP

This case history focuses on Walter C. Anderson, a U.S. citizen who allegedly placed more than \$450 million offshore, devising several ways to hide his ownership of these assets.<sup>129</sup> In 2005, he was indicted for evading more than \$200 million in federal and District of Columbia income taxes, and he is now awaiting trial.<sup>130</sup> The indictment alleges that Mr. Anderson founded and owned several corporations, particularly in the telecommunications industry. It claims that through the use of offshore structures, he disguised his ownership of these companies, and profited from their growth and sales while avoiding oversight of tax agencies and securities regulators.

**Background.** Born in the 1950s and raised in the Washington, D.C. area, Mr. Anderson earned hundreds of millions of dollars during the 1990s in the telecommunications industry through a complex series of company mergers and sales. He founded three telecom companies, Mid Atlantic Telecom, Telco Communications Group Inc., and Esprit Telecom, and sold each, obtaining cash and valuable shares which he then allegedly hid offshore.

In 1984, Mr. Anderson formed a regional long-distance carrier in Washington, D.C., called Mid Atlantic Telecom (MAT), and became its principal shareholder and president.<sup>131</sup> Documents filed with the SEC reveal that by 1993, MAT was losing money and was in danger of going out of business.<sup>132</sup> In 1992, Mr. Anderson entered into negotiations to sell MAT to a publicly traded corporation, Rochester Telephone

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<sup>129</sup> The information in this section is taken primarily from the federal indictment of Mr. Anderson and related legal pleadings. United States v. Anderson, Criminal No. 05-66 (USDC DC), indictment (2/23/05), superceding indictment (9/30/05)(hereinafter “Anderson Indictment”). Mr. Anderson declined the Subcommittee’s request for an interview. Subsequent to this report and the Subcommittee’s hearing, on 9/8/06, Mr. Anderson pled guilty to tax evasion.

<sup>130</sup> Anderson Indictment at para. 18.

<sup>131</sup> United States v. Anderson, Criminal No. 05-66 (USDC DC), Affidavit in Support of Government’s motion to Order Walter C. Anderson to Comply with Grand Jury Subpoenas or Show Cause Why He Should Not Be Held in Contempt at para. 3 (10/28/04)(hereinafter “Government Affidavit”). This affidavit was sworn by Matthew J. Kutz, an IRS special agent assigned to the investigation of Mr. Anderson.

<sup>132</sup> 5/3/93 Independent Auditors’ report of MAT, included with Form S-4 filed with the SEC by Rochester Telephone Corporation (“The Company’s recurring losses from operations, working capital deficit, net stockholders’ deficiency and obligations under existing borrowing arrangements raise substantial doubt about the entity’s ability to continue as a going concern.”). See also “\$200,000,000: Telecom Tycoon Used International Financial Labyrinth,” The Washington Post (4/18/05)(hereinafter “Telecom Tycoon”).

Corporation (RTC).<sup>133</sup> Mr. Anderson was allegedly due to earn about \$7 million upon completion of the merger.<sup>134</sup>

**Anderson Offshore Structure.** Prior to the completion of the merger, Mr. Anderson allegedly took steps to prevent his earnings from the merger from being seized as payment for back taxes.<sup>135</sup> According to the indictment, in early September 1992, Mr. Anderson hired an offshore services provider known as Arias, Fabrega & Fabrega Trust Company to establish a company in the British Virgin Islands (BVI) which he named Gold & Appel (G&A). The incorporation papers apparently authorized the issuance of one thousand G&A shares.<sup>136</sup> The indictment alleges, however, that Mr. Anderson directed the issuance of only ten shares, all of which were given to Icomnet S.A., another offshore company that Mr. Anderson had previously formed in the British Virgin Islands. Mr. Anderson then allegedly granted himself an exclusive option to purchase the remaining 990 shares of G&A.<sup>137</sup>

The indictment further alleges that later that same month, September 1992, Mr. Anderson, using the alias Mark Roth, hired another offshore services provider, The Company Store, to form a bearer share company in Panama called Iceberg Transport, S.A. (Iceberg).<sup>138</sup> According to the indictment, Mr. Anderson had the shares delivered to him, making him the sole owner of Iceberg.<sup>139</sup> The indictment alleges that Mr. Anderson then caused Icomnet to transfer its ten G&A shares to the new company, Iceberg. There is apparently no evidence that Mr. Anderson ever exercised or transferred his option to purchase the remaining G&A shares. The end result was that Iceberg, the bearer share corporation, became the sole owner of the issued shares of G&A, while the unissued shares were under the exclusive control of Mr. Anderson.

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<sup>133</sup> 8/25/93 Amendment No. 2 to Form S-4 filed with the SEC by RTC.

<sup>134</sup> Government Affidavit at para. 3.

<sup>135</sup> According to the indictment and related pleadings, during this period, Mr. Anderson had repeated contacts with the IRS. Mr. Anderson then filed delinquent tax returns for the years 1987-1993, but did not pay the taxes he allegedly owed. See Anderson Indictment at para. 31.

<sup>136</sup> *Id.* at para. 12.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at para. 13. Unlike the typical U.S. corporation, there is no central registry of the owners of a bearer-share company; the person in actual possession of the bearer-shares is deemed the owner of the company.

<sup>139</sup> *Id.*

The indictment alleges that Mr. Anderson claimed under oath in court proceedings that he did not know the identity of the beneficial owners of G&A.<sup>140</sup> In addition, although Mr. Anderson owned Iceberg which, in turn, owned G&A, he disclaimed ownership of G&A in a filing with the SEC.<sup>141</sup> The indictment alleges that he further hid his ownership of G&A by using aliases and private mail boxes to exercise control of the company's officers and directors, business records, and bank and brokerage accounts.<sup>142</sup>

**Transferring Assets Offshore.** After forming G&A, Mr. Anderson began allegedly transferring his assets to the offshore company. In December 1991,<sup>143</sup> he granted G&A an option to buy almost his entire ownership stake in MAT for three cents a share.<sup>144</sup> The next year, just before RTC purchased MAT, G&A exercised its option, took possession of a substantial number of MAT shares, and when the sale went through, took possession of the sale proceeds.<sup>145</sup>

A letter prepared by MAT's tax counsel, Swidler & Berlin, indicates that MAT shareholders did not treat the merger with RTC as a taxable event, instead classifying the merger as a reorganization.<sup>146</sup> Swidler & Berlin expressed the opinion that because G&A had acquired its shares of MAT prior to the beginning of merger negotiations and not in anticipation of the merger, G&A should be treated as a "historical

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<sup>140</sup> Government Affidavit at para. 5

<sup>141</sup> See 1/21/97 Schedule 13D filed with the SEC by Walter Anderson as G&A's "attorney-in-fact" ("Mr. Anderson disclaims beneficial ownership of the Common Share held by Gold & Appel.").

<sup>142</sup> Anderson Indictment at para. 15.

<sup>143</sup> This date, December 1991, was cited in a 6/23/93 letter from Swidler & Berlin, Chartered, which was included with 7/13/93 Amendment No. 1 to Form S-4 filed with the SEC by Rochester Telephone Corporation. The Anderson Indictment, however, states that G&A was not formed until September 1992.

<sup>144</sup> 6/23/93 letter from Swidler & Berlin, Chartered, included with 7/13/93 Amendment No. 1 to Form S-4 filed with the SEC by Rochester Telephone Corporation. At the time of the merger Mr. Anderson was listed as beneficial owner of 734,680 shares of MAT, with G&A legally owning 684,680 of those shares, though Mr. Anderson retained control of those shares through a power of attorney agreement. 5/3/93 Form S-4 filed with the SEC by Rochester Telephone Corporation.

<sup>145</sup> See "Telecom Tycoon."

<sup>146</sup> Section 1.368-1(b) of the Treasury Regulations requires that there be a "continuity of interest" for the stockholders, meaning that at least half of the consideration given for the merger must be given to target stockholders who owned stock in the target company prior to the merger, not including any stockholders who may have acquired their stock in anticipation of or in reliance upon the merger. See 6/23/93 Swidler & Berlin letter.

shareholder.”<sup>147</sup> Yet subsequent SEC filings by RTC indicate that Mr. Anderson had been authorized to investigate “strategic alternatives for the financial recapitalization of the company” in July 1991.<sup>148</sup> This authorization was provided five months before the agreement granting G&A the option to purchase Mr. Anderson’s MAT shares.<sup>149</sup>

Mr. Anderson continued to add to G&A’s assets by transferring additional ownership interests in various companies to G&A, according to the indictment. For example, in 1994, Mr. Anderson sold about 5.8 million shares in Telco Communications Group Inc., a company he had founded, back to the company for \$25,000. He then directed Telco to sell about 6.5 million shares to Iceberg for \$50,000. Upon receipt of the shares, Iceberg transferred them to G&A.<sup>150</sup> Two years later, in August 1996, Telco went public, dramatically increasing the value of its shares. As a result of the public offering, the Telco stock held by G&A was worth about \$90.5 million.<sup>151</sup> The next year, in 1997, Telco was merged with another publicly traded corporation, Excel Communications, forming a new company. As a result of that merger, G&A received \$97 million in stock in the new company and \$92 million in cash.<sup>152</sup>

Mr. Anderson also transferred to G&A about 20 million shares of a European-based company that he had founded, known as Esprit Telecom. In 1997, Esprit went public, increasing the value of the shares held by G&A to more than \$26.5 million.<sup>153</sup> Two years later, in 1999, Esprit was sold to another public company, Global Telesystems, Inc.

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<sup>147</sup> 6/23/93 Swidler & Berlin letter.

<sup>148</sup> 8/25/93 Amendment No. 3 to Form S-4 filed with the SEC by Rochester Telephone Corporation.

<sup>149</sup> 6/23/93 Swidler & Berlin letter.

<sup>150</sup> See 6/13/96 Form S-1 filed with the SEC by Telco (stating that, on 7/20/94, Telco purchased about 5.8 million shares from “a founding shareholder” for \$25,000; that shareholder then directed Telco to sell about 6.5 million shares to Iceberg for \$50,000; and on 4/30/96, Iceberg transferred these shares to G&A).

<sup>151</sup> See 9/20/96 Form 10-Q filed with the SEC by Telco (showing its shares sold for \$14 per share in the initial public offering).

<sup>152</sup> See 9/11/97 Form S-4 filed with the SEC by New Res, Inc.

<sup>153</sup> On 3/30/98, Mr. Anderson filed a disclosure form with the SEC indicating that G&A was the beneficial owner of more than 20 million shares of Esprit Telecom or about 16 percent of the total company. The form also stated that Mr. Anderson might be deemed to be the beneficial owner of those shares, but he disclaimed such ownership. The form indicated further that another 2 million shares were held by the Foundation for the International Non-Governmental Development of Space, an organization of which Mr. Anderson was the President and Director. See Schedule 13D, filed 3/30/98 by G&A and Mr. Anderson.



(GTS). After the merger, G&A apparently held GTS stock worth over \$250 million.<sup>154</sup>

The indictment alleges that Mr. Anderson held 100 percent of the stock of Iceberg through bearer-shares, and that G&A was a wholly-owned subsidiary of Iceberg. According to the indictment, all of Iceberg's income was attributable to Mr. Anderson as the company's sole owner.<sup>155</sup> In addition, the indictment alleges that the stock held by G&A and Iceberg had appreciated in value between 1995 and 1999, with a net value of about \$450 million, none of which had been reported on Mr. Anderson's tax returns.<sup>156</sup> Further, after learning of IRS liens against property held in his name, Mr. Anderson allegedly took the step of purchasing real property with G&A funds in the names of corporate or trust entities created and controlled by him.<sup>157</sup>

In March 2002, the law enforcement agents obtained a search warrant and searched Mr. Anderson's Washington, D.C. office. During that search, the government states that it found and seized all of the Iceberg bearer shares, which allegedly had been mailed at the time of Iceberg's formation to a mailbox in the Netherlands controlled by Mr. Anderson.<sup>158</sup> The government states that it also seized a document granting Mr. Anderson's mother the exclusive option to purchase 99 percent of Iceberg, a company worth hundreds of millions of dollars, for \$9,900. Mr. Anderson's mother told investigators that she had been unaware of her rights to purchase Iceberg.<sup>159</sup>

**Disguising Ownership.** After the search of his office, Mr. Anderson took further action to disguise his ownership of Iceberg and protect the assets under his control, according to the IRS investigator's affidavit. Mr. Anderson allegedly directed G&A's nominee director in the British Virgin Islands to limit her disclosures about the company's ownership. According to the IRS affidavit, he then changed the structure of Iceberg by establishing two wholly-owned subsidiaries, Space Inc. in the British Virgin Islands, and Comverge Ltd. in the

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<sup>154</sup> At the time of the merger, G&A beneficially owned nearly 33 million shares, which were exchanged for GTS stock worth \$7.96 a share. Schedule 14D1, filed 2/2/99 by Global Telesystems.

<sup>155</sup> Anderson Indictment at para. 24.

<sup>156</sup> *Id.* at para. 17-18.

<sup>157</sup> *Id.* at para. 31.

<sup>158</sup> *Id.* at para. 13.

<sup>159</sup> Government Affidavit at para. 13.

Bahamas. Mr. Anderson then allegedly requested the companies in which G&A owned shares to reissue those shares in the names of the two new subsidiaries. Then he caused Iceberg to issue a new share certificate representing 100 percent of its equity and give it to a newly formed offshore trust, called Smaller World Trust. Mr. Anderson allegedly also named Iceberg the trustee of Smaller World Trust, making Iceberg the trustee of the entity which owns Iceberg.<sup>160</sup>

The affidavit further alleges that Mr. Anderson took action to create a Cayman Islands entity with the name Smaller Island Trust, and contacted a Panamanian offshore services provider, Sovereign Management Services, to form the Smaller World Foundation.<sup>161</sup> It is unclear whether or not Mr. Anderson transferred any assets to these new entities. Mr. Anderson also shipped millions of dollars in artwork to Switzerland.<sup>162</sup> The end result was a far-flung offshore structure with entities in the British Virgin Islands, Cayman Islands, Panama, and Switzerland.

In November 2003, government investigators executed a second round of search warrants for Mr. Anderson's residence, storage facility, and new office. In Mr. Anderson's office, the agents state that they found a trust document for the Smaller World Trust with the names of the settlor and the date of settlement redacted. Mr. Anderson was identified as the trust's "initial protector" and "protector" and was named as "the party most familiar with the true and actual intentions and Purposes of the Trust." The protector was given the right to current information for all trust matters.<sup>163</sup>

In February 2005, a federal grand jury issued a twelve-count indictment charging Mr. Anderson with engaging in a tax evasion scheme that concealed more than \$450 million in taxable income.<sup>164</sup> He was arrested and pleaded not guilty. In part, Mr. Anderson claimed to be a mere employee of G&A. The court has upheld the government's motion to detain Mr. Anderson pending trial, noting his "unique ability to flee the jurisdiction and evade detection by the United States government by virtue of his substantial assets abroad, his connections overseas, and his use of aliases and false identities." The court stated

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<sup>160</sup> *Id.* at para. 16.

<sup>161</sup> *Id.* at para. 20.

<sup>162</sup> *Id.* at para. 15.

<sup>163</sup> *Id.* at para. 18-19.

<sup>164</sup> Anderson Indictment at para. 18.

that Mr. Anderson's false identities included, "Mark Roth, William Prospero, Robert Zzylich, Robert Zzylick, R. Langer, Ragnor Danksjold, and Dr. Paul Anderson." It also noted that the books seized from Mr. Anderson's home and office included: "I.D. by Mail," "Reborn Overseas: Identity Building in Europe, Australia and New Zealand," "Methods of Disguise," "Poof! How to Disappear and Create a New Identity," "Who Are You? The Encyclopedia of Personal Identification," "Bulletproof Privacy, How to Live Hidden, Happy, and Free," "Complete Guide to Financial Privacy," "Complete Guide to Offshore Money Havens," "Reaching Offshore Assets (It Won't Be Easy)," and "Capturing Cargo Adrift – Reaching Offshore Assets."<sup>165</sup> These books alone illustrate the breadth of the offshore industry today.

**Conclusion.** The government has developed evidence that Walter Anderson took advantage of secrecy laws in multiple tax haven countries to create a structure of offshore corporations and trusts. Through a series of assignments, sales, and transfers, Mr. Anderson allegedly placed into these offshore entities more than \$450 million in cash and stock, including large interests in telecommunications firms. Mr. Anderson is accused of disguising his ownership of these assets through a range of techniques including shell companies, bearer shares, nominee directors and trustees, and the issuance of options to a person with no knowledge that she possessed them. The government claims that this structure allowed Mr. Anderson to evade more than \$200 million in taxes.

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<sup>165</sup> United States v. Anderson, Criminal No. 05-66 (USDC DC), Opinion and Order (3/16/05).

## **VII. POINT CASE HISTORY: OFFSHORE SECURITIES PORTFOLIO**

In addition to the offshore asset protection and tax structures discussed above, which were normally designed for use over an extended period of time, the Subcommittee investigated the use of offshore secrecy jurisdictions to facilitate the development, sale, and execution of one-time tax shelter transactions. This aspect of the investigation focused on a small number of transactions designed and sold by Seattle-based Quellos Group, LLC, (Quellos) to several high net worth individuals to defer and to some extent eliminate tax on other transactions that produced income.

As will be explained in detail below, the Subcommittee's investigation found that:

- The U.S. tax shelter promoter, Quellos, concocted a tax shelter that was based upon the fabrication of billions of dollars worth of fake securities transactions that were used to generate billions of dollars in fake capital losses and offset real taxable capital gains of U.S. taxpayers so they could avoid paying taxes to the U.S. Treasury.
- The POINT transaction was carried out under offshore secrecy laws with the assistance of compliant trust and corporate management companies in the Isle of Man and the Cayman Islands which allowed the true nature of the securities transactions and the entities that conducted them to remain hidden.
- The POINT strategy was promoted to individuals as a tax avoidance product, but with the possibility of realizing some income to cover a part of the fees.
- The part of the scheme included to provide the appearance of a profit objective needed to support the claimed tax benefits was intended to be eliminated long before any possible profit could be realized.
- The fees charged by Quellos for designing and implementing the scheme depended on the amount of tax loss generated in each transaction; the more money the transaction "lost," the larger fees Quellos collected.

- Prominent law firms collaborated with Quellos on the development of a legal rationale to support the legitimacy of the tax losses generated by the POINT transactions.
- Prominent U.S. and foreign financial institutions provided financing, planning, and technical assistance for the execution of the transactions knowing they were designed to avoid taxes and without conducting adequate due diligence into the underlying transactions.

Quellos advertises itself as a “global financial boutique that is focused on providing leading edge investment management services to institutional and private clients worldwide.”<sup>166</sup> The firm employs professionals with asset management, investment banking, and “big four” audit experience.<sup>167</sup> Quellos has offices in Seattle, New York, and London.<sup>168</sup> Founded in 1994 by CEO Jeffrey Greenstein, Bryan White, and two others, Quellos operated under the name Quadra Capital management until 2000. In the mid to late 1990s, Quellos helped accounting firm KPMG LLP design, develop, market, and implement tax shelter products for sale to U.S. clients.<sup>169</sup> In 1999, Quellos developed a new tax shelter strategy, based on helping clients with large anticipated capital gains acquire securities with built-in losses to offset the gains and defer, or even avoid altogether, paying income tax on those gains. Over the next two years, Quellos promoted this strategy, known as POINT (Personally Optimized INvestment Transaction), to six wealthy clients in six separate transactions resulting in the elimination of over \$2 billion in gains at a cost to the Treasury of approximately \$300 million.<sup>170</sup>

In the sections that follow, this Report will describe the genesis of the POINT strategy, the entities involved, the transactions as described in the documentation, and the transactions as they actually occurred.

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<sup>166</sup> Quellos website, [www.quellos.com/Section.aspx?Link=About](http://www.quellos.com/Section.aspx?Link=About) (viewed 7/13/06).

<sup>167</sup> *Id.* at [www.quellos.com/Section.aspx?Link=InvestmentManagement](http://www.quellos.com/Section.aspx?Link=InvestmentManagement) (viewed 7/13/06).

<sup>168</sup> *Id.* at [www.quellos.com/ContactUs.aspx](http://www.quellos.com/ContactUs.aspx) (viewed 7/13/06).

<sup>169</sup> See Report of the Permanent Subcommittee on Investigations, “The Role of Professional Firms in the U.S. Tax Shelter Industry,” S. Rept No. 109-54, 4/13/05, p.11.

<sup>170</sup> The \$300 million estimate is based on applying the 15 percent capital gain tax rate to the total amount of loss generated by the POINT transactions.

**Development of the POINT Strategy**

The Quellos employees centrally involved in the development and promotion of the POINT strategy were founder and CEO Jeffrey Greenstein, Private Client Group Director Chuck Wilk, Larry Scheinfeld, also of the Private Client Group, and Brian Hanson and Chris Hirata, of the Custom Strategies Group. Mr. Greenstein, who has been with Quellos since 1997, specialized in developing financial services tailored to individual clients. Mr. Greenstein's expertise is in securities investments, including derivatives and hedging transactions. Mr. Wilk, a tax lawyer, came to Quellos in May 1999 from PriceWaterhouseCoopers, where he had been in charge of their Wealth Transfer Solutions practice in the Southwest Region. He was hired by Quellos primarily to provide estate planning services for wealthy clients. Mr. Scheinfeld is a former KPMG employee who heads up Quellos' New York office. Mr. Hanson and Mr. Hirata provided administrative and accounting assistance and worked out much of the transactional details and documentation for the strategy planned by Mr. Greenstein and Mr. Wilk as applied to the needs of individual clients.

The idea behind POINT was to combine two products already in wide use into a new strategy that would be proprietary to Quellos. One was a product, already marketed by Quellos, in which a taxpayer would acquire a partnership that held stock with a large unrealized capital loss and use that loss to offset other gains of the taxpayer. Mr. Greenstein said he had heard the transaction referred to as a "mixing bowl" because the partnership is used to mix loss assets with existing gain assets to wipe out the gain.<sup>171</sup> These plans are also often referred to as "loss importation" strategies, because they involve identifying loss assets, "importing" them into partnership structures, where they can be mixed with the client's gain assets to cancel out the gains. There have been many variations of this shelter promoted over the years, and the principal weakness in all of them is the absence of a non-tax business reason for the transaction. The Internal Revenue Service has consistently challenged various forms of this transaction based essentially on the same issue: the lack of a profit motive to support the claimed tax losses.<sup>172</sup> As Mr. Greenstein told Subcommittee staff, the question about this transaction is "why would anyone buy these?"<sup>173</sup>

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<sup>171</sup> Subcommittee interview of Mr. Greenstein (6/28/06).

<sup>172</sup> See, e.g., IRS National Office Field Service Advice Memorandum on Basis Shift (302/318 Loss Importation)(FSA 200202057), 2001 FSA LEXIS 197 (10/11/01).

<sup>173</sup> Subcommittee interview of Mr. Greenstein (6/28/06).

In June 1999, Quellos was promoting such a strategy, called “Gain Deferral Trade.”<sup>174</sup> This product involved a three-step transaction designed to completely offset the client’s anticipated gain on the sale of securities (or other property).<sup>175</sup> Quellos issued a memorandum describing this strategy as “designed to allow an investor to liquidate low basis stock [gain stock] on a tax deferred basis.” Nowhere in the memorandum is there any mention of any aspect of the transaction that would make a profit for the Quellos customer on the transaction itself.<sup>176</sup>

The second product was a sophisticated securities derivative product being sold to investors in Europe by large financial institutions like UBS, which had a version of this product called BLOC. Jeffrey Greenstein and Chuck Wilk of Quellos learned about BLOC in the summer of 1999, when they traveled to London to meet with representatives of UBS to discuss their investment relationship.<sup>177</sup> One part of the BLOC product involved the issuance of long dated

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<sup>174</sup> 6/21/99 Memorandum entitled “Quadra Custom Strategies, LLC, Gain Deferral Trade” (PSI-QUEL27244-48).

<sup>175</sup> The steps, as described in a Quellos memorandum, were as follows:

Step One – Quellos and a third party investment fund with loss stock would create a Limited Liability Company (LLC) taxable as a partnership and the fund would contribute stock with the amount of loss needed by the Quellos client to the LLC in exchange for a 99 percent share in the LLC. Because the stock was contributed, rather than sold to the LLC, the LLC’s tax basis in the stock would be the same high basis that the hedge fund had (the amount originally paid for the stock before it declined in value).

Step Two – The Quellos client would buy the investment fund’s interest in the LLC with borrowed money equal to the current value of the stock, and for an additional fee the fund would give the LLC a two month “put” or right to sell the loss stock back to the fund at that day’s price. The client would also contribute his gain stock to the LLC. At the end of step two, the client would hold a 99 percent interest in an LLC holding both the gain and loss stock, and his basis in the LLC would be his original basis in the gain stock contributed, plus the amount of cash paid to the hedge fund. (The LLC would still have the high basis in the stock it owned carried over from its original owner.)

Step Three – All of the stock would be sold, and the losses and gains would cancel each other out, so that no tax would be due on the sale. (The Quellos memorandum does not state who the stock would be sold to, but the existence of the put suggests that the stock could be sold back to the hedge fund at the original price unless the market price went up before the time of sale. (PSI-QUEL27246)) The client would have enough basis in his interest in the LLC to make a tax free withdrawal of enough cash to pay off the bank loan needed to buy the LLC interest, and he could continue to invest the sales proceeds tax free for as long as the investments were made through the LLC. (PSI-QUEL27244-48).

<sup>176</sup> Id.

<sup>177</sup> Subcommittee interview of Mr. Wilk (6/26/06).

warrants<sup>178</sup> backed by U.S. securities. The warrants were sold to investors for a premium, and the funds from the warrant premium were then used to hedge against a decline in the price of the stock or to generate interest income. UBS would also package the securities that backed the warrant with the premium investments and sell shares of the package to other investors, generating additional income. By breaking the ownership of the package into smaller shares for resale, UBS would generate a further premium for itself.<sup>179</sup>

Quellos decided to combine the concept of the tax loss partnership from the first product with the long dated warrant from the BLOC transaction to form a new product called POINT. By including the warrant feature, POINT would have an apparent source of income that could supply a profit objective that was missing from products like the “Gain Deferral Trade.” The plan was to create a portfolio of stocks that were expected to decline in value, wait until the market moved down, and select particular loss stocks from the portfolio to place in partnerships that could be sold to taxpayers who wanted to use the losses to offset against their gain on other assets to reduce their taxes. Each partnership would sell a long dated warrant on its loss stock in exchange for a fee called a “premium.” The warrant was portrayed as providing an attractive opportunity to make a profit (which would support the tax aspects of the transaction).<sup>180</sup> Because it generated this premium income, the warrant was a critical element in promoting the appearance that the POINT strategy had a profit-making objective. However, as will be discussed in detail below, the Quellos documents establish that there was never any real intent to earn a profit from the warrants, because the

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<sup>178</sup> A warrant is a certificate entitling the holder to buy, at a future date, a specific amount of securities at a specific price, usually above the current market price at the time of issuance. A warrant is like a call option, but with a much longer time span – anywhere from a few years to forever. A long dated warrant is one with a longer, rather than shorter exercise term. In the case that the price of the security rises to above that of the warrant's exercise price, then the investor can buy the security at the warrant's exercise price and resell it for a profit. Otherwise, the warrant will simply expire or remain unused. Warrants are listed on options exchanges and trade independently of the security with which they were issued.

<sup>179</sup> Subcommittee interview of Mr. Wilk (6/26/06); Brochure, UBS BLOC, Higher returns when markets are moving sideways, June 2005; Memorandum on Point Strategy (PSI-QUEL22599-600); 8/11/99 email from Mr. Wilk to Mr. Greenstein and attached Memorandum on Point Strategy (PSI-QUEL22589-91).

<sup>180</sup> See, e.g., summary of transaction provided to Mr. Johnson (PSI-RWJ000271-72); 8/5/99 email from Mr. Greenstein to Mr. Wilk (“attached are some initial thoughts.”) and attached draft outline (“The premium received from selling the option/warrant is used to pay the owner an attractive yield substantially above comparable securities.”)(PSI-QUEL22581-82).



plan was to recall the warrants and forfeit the premium as soon as they were issued.<sup>181</sup>

Because of the importance of the tax attributes to the transaction, Quellos sought the assistance of prominent tax counsel to help design the structure, as well as to issue tax opinions to potential investors. According to Chuck Wilk, the POINT design team consisted primarily of himself and Jeffrey Greenstein from Quellos; Lewis Steinberg and Aktssa Wolpin from the law firm Cravath, Swaine & Moore; and Chris Donegan, John Staddon, and Rajab Puri from UBS.<sup>182</sup>

Email records provided to the Subcommittee by Quellos confirm that obtaining a favorable tax opinion from prominent tax counsel was critical to going forward with the POINT transactions. Quellos was looking for a firm that would take an aggressive approach in support of the POINT strategy. In an email to Mr. Greenstein and Mr. Wilk dated July 19, 1999, Mr. Scheinfeld expressed his frustration at the delay in lining up tax counsel:

“I hope we are making the right decision by waiting for Cravath/Skadden [Cravath, Swaine & Moore LLP and Skadden, Arps, Slate, Meagher & Flom LLP]. I’m having second thoughts on waiting. I believe we should make a decision on either Mike or KPMG and move forward with them. Start to finish is still a long process for either of these firms, regardless of whether we have an opinion or not. I feel like we have lost the momentum of our June meeting with KPMG. We cannot compete with them as far as finding clients. It seems to me that all the Big 5 firms are selling all kinds of strategies.”<sup>183</sup>

Two weeks later, Mr. Greenstein sent Mr. Wilk an email suggesting that the considerations in hiring a firm were not only who had the best credentials, but who would be most “aggressive”:

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<sup>181</sup> See, e.g., 8/5/99 email from Mr. Greenstein to Mr. Wilk and attached outline (PSI-QUEL22581-82)(stating that the first step after closing on the transaction is “Taxpayer liquidates asset(s) and redeems warrants (under the call option)”); 8/11/99 email from Mr. Wilk to Mr. Greenstein and attached draft outline (PSI-QUEL22589-91)(describing the plan for a POINT transaction: “Subsequent to the closing on the ownership units, [Quellos] evaluates the economic benefit of leaving the covered warrants out in the market and decides to exercise the imbedded call option and redeem the warrants.”).

<sup>182</sup> Subcommittee interview of Mr. Wilk (6/26/06).

<sup>183</sup> 7/19/99 email from Mr. Scheinfeld to Mr. Greenstein (PSI-QUEL22597).

“Had drinks last night with friends from Mayer Brown & Platt/ Akin Gump, Strauss & Howard/ Millbank, Tweed, Hadley & McCoy/ Battle Fowler. Battle Fowler does a lot of real estate and some very aggressive basis savings transactions. My friend thinks they would have clients with high basis low FMV [fair market value] assets (the bad assets) and clients who would like our trade because they have low basis high FMV real estate. He also thinks they would be willing to opine. My friend also told me that Shearman and Sterling had been very aggressive on 704(c)<sup>184</sup> transactions prior to the re-write of that section and would probably still retain an aggressive stance.

“Spoke with Chris . . . about Mayer Brown & Pratt. He will check but believes UBS would take their opinion and told me that there had been an occasion when MBP opined for the Bank when Cravath would not.”<sup>185</sup>

During the Fall of 1999, Quellos was working with Andy Kenoe of Skadden Arps Slate Meagher & Flom (Skadden Arps) on preliminary planning for the POINT transaction, and was negotiating with Skadden Arps over the provision of an opinion on at least the BLOC (warrant) portion of the structure. Chuck Wilk emailed Chris Donegan at UBS regarding the need to get BLOC materials to Skadden Arps:

“Andy left me a voicemail stating that it was not that they had any substantive issues but merely that he was having a hard time coordinating the schedules of the ‘opinion’ committee members. . . . He did state that they would prefer being retained by the client and delivering the opinion to the client.

[Redacted by Quellos.]

“POINT – the reason Jeff is hesitant to assist in locating the ‘loss’ assets is because Skadden told us to limit if not eliminate our involvement in the original formation of the BLOC piece and to become involved at the point in time that we introduce the U.S. investor to the trade. This is merely an ‘optics’ issue and not a substantive tax issue. I believe that it would be o.k. for us to introduce UBS to a hedge fund that

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<sup>184</sup> An Internal Revenue Code provision relating to the allocation of gain and loss on partnership property. 26 U.S.C. § 704(c).

<sup>185</sup> 8/4/99 email from Mr. Greenstein to Mr. Wilk (PSI-QUEL22583).

we knew had assets ('loss' assets) and at that point UBS and the fund without further [Quellos] involvement could form the BLOC piece.”<sup>186</sup>

As late as September 29, 1999, Quellos was still dealing with Skadden Arps, but UBS was expressing concerns that the “optics” the one partner was “playing around” with should not be permitted to make the trade “too cumbersome to execute.”<sup>187</sup>

By December, Quellos was working with Cravath, Swaine & Moore (Cravath) on drafting an opinion.<sup>188</sup> On December 17, 1999, Quellos informed a prospective POINT investor that it was nearing completion of a draft opinion:

“I had a meeting this week with Lew Steinberg of Cravath Swaine & Moore to finalize the draft of the opinion and to review the economics of the trade. All is moving forward and Lew is attempting to have a draft opinion for our review in the next two weeks (holidays permitting). Jeff Greenstein is reviewing the current economic model and after receiving his comments we should be able to deliver, after the holidays, an economic model. We believe that after reviewing the merits of this trade you will conclude, as we have, that this trade both economically and structuraly [sic] (thanks to Cravath's input) is more robust than the other trades in the marketplace.”<sup>189</sup>

Thereafter, Quellos consulted with Mr. Steinberg of Cravath on the design of the first three transactions and the crafting of legal opinions for three potential clients.

In early 2000, John Staddon, Chris Donegan, and Rajan Puri moved from UBS to European American Investment Group (Euram). Euram is a financial services provider with offices in six cities, including New York, London, and Vienna.<sup>190</sup> It was founded in 1999 by professionals from UBS, Deutsche Bank, and McKinsey.<sup>191</sup> Euram

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<sup>186</sup> 9/23/99 email from Mr. Wilk to Mr. Donegan (PSI-QUEL22586-87).

<sup>187</sup> 9/29/99 email from Mr. Wilk to Mr. Donegan (PSI-QUEL22585).

<sup>188</sup> 12/1/99 email from Mr. Wilk to Mr. Greenstein (PSI-QUEL11572).

<sup>189</sup> 12/17/99 email from Mr. Wilk (PSI-QUEL13317).

<sup>190</sup> Euram website, at [www.eurambank.com/simple.asp?id=98](http://www.eurambank.com/simple.asp?id=98) (viewed 6/20/06).

<sup>191</sup> *Id.*

employs 90 full-time staff working in areas including securities brokerage, investment advising, and wealth management.<sup>192</sup> Mr. Staddon became the Global Head of Structured Products for Euram subsidiary Euram Advisors in London, and Mr. Puri became the Managing Director and Chief Financial Officer of the Structured Products Group.<sup>193</sup>

Quellos continued to develop the POINT Strategy in concert with Mr. Staddon, Mr. Donegan, and Mr. Puri after their move to Euram.

### **Basic Structure of the POINT Transaction**

The structure of the POINT transaction designed by Quellos with the assistance of Cravath and Euram basically followed the pattern of the “Gain Deferral Trade” described above, with a long dated call warrant added on to provide an apparent profit objective that was required to support the transaction for tax purposes. However, the evidence developed by the Subcommittee shows that the profit objective was not real because the parties never intended to actually sell the warrant into the marketplace.

Each transaction was expected to take place in a series of steps, many of which would occur simultaneously. A key player was a shell corporation established in the Isle of Man, called Barnville, which participated in all six POINT transactions. Another key player was Jackstones, a second Isle of Man corporation that, like Barnville, appears to have had no employees and virtually no assets of its own. Both companies are administered by Isle of Man offshore service providers, Triskelion Trust Company in the case of Barnville and Trident Trust Company (later Sanne Corporate Services) for Jackstones, which accepted directions from Euram on corporate actions. The plan was for Barnville to acquire a large portfolio of loss stock and contribute a portion of the stock to a “Trading Company” in exchange for about 99 percent of the ownership of the Trading Company.<sup>194</sup> The remaining one percent of the Trading Company would be owned by another Euram entity, so that the Trading Company could be considered a “partnership” for U.S. tax purposes. Because the transfer of the portfolio to the

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<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> Because Barnville had “loaned” all shares in the “portfolio” to another Isle of Man entity, Jackstones, for “cash collateral” as will be discussed in detail below, all Barnville could actually contribute to the Trading Company was the right to call in the loaned shares, subject to Jackstone’s right to a return of its “cash collateral.” These rights had to be readjusted or “unwound” in various ways as variations of the transaction played out.

Trading Company was a non-taxable contribution to capital, rather than a taxable sale, the Trading Company would take the portfolio at the same high tax basis Barnville had in the shares, under 26 U.S.C. §§ 721(a) and 723.

An “Acquisition Company” formed by or on behalf of the Quellos client would purchase Barnville’s share of the Trading Company for cash equal to the present, low value of the loss stock portfolio, and the one percent share of the Euram entity would be bought by another client entity or perhaps Quellos. In the mean time, the stock portfolio would supposedly be used by the Trading Company to support the issuance of a long dated warrant for a premium that would be reinvested as the principal source of economic profit on the transaction. (Appreciation of the portfolio after the purchase would be another potential source of profit, but a hedging transaction called a collar was planned to limit the potential for loss if the stock declined in value, and the collar would also limit the amount the client could profit if the stock rose.)

The investor would at some point contribute the previously owned stock with a capital gain (gain stock) to the Acquisition Company, which would in turn contribute it to the Trading Company. Once the gain and loss stock were both in the Trading Company, the stock could be sold, and the loss on the stock acquired from Barnville would offset the gain on the investor’s stock. As long as the stock proceeds were kept in the Trading Company, the theory was that the investor could avoid indefinitely all taxes on the profits on his original stock.

### **Creation of the Barnville Portfolio**

In order for the POINT transaction to work, Quellos had to have access to a large quantity of loss stock. Quellos told HSBC Bank, which financed some of the trades, that the loss stock was being acquired with the assistance of Euram from European investors who were holding stock that had declined in value but who could not use the losses:

“Among other business lines, EURAM Advisors, using among other vehicles Barnville and Jackstones, creates and arranges transactions with institutional and high net worth clients. Some existing clients cannot use loss for tax deductions. They warehouse these losses until a buyer is located who can take advantage of the situation. In this way, the clients can recoup some of the losses.”<sup>195</sup>

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<sup>195</sup> HSBC summary of Quellos transaction (HUI0000885-87, at 886); Subcommittee deposition of Mary Pan (7/25/06) at p. 69.

Contrary to what Quellos told HSBC, the loss stock was not being acquired from European investors. Jeffrey Greenstein was selecting “high flying tech stocks” that he believed were overvalued and likely to decline in value and then passing those selections to Euram.<sup>196</sup> Euram’s job was to create a paper portfolio of securities from which smaller subsets or “baskets” of securities that had gone down in value could be later selected for sale to U.S. investors who needed the tax losses. Since the goal was to create losses, and since the portfolio only existed on paper, the more the stock went down, the better for Quellos and Euram.

The paper portfolio was “created” by having two Isle of Man companies with no apparent assets exchange contracts with each other. Under these contracts, Jackstones, which owned no stock, would “sell” stock to Barnville in exchange for cash that Barnville did not have, and Barnville would “loan” the stock, which it had not received, back to Jackstones in exchange for the payment of cash collateral, which Jackstones did not have. Because these transactions were undertaken simultaneously, the two obligations to pay each other equal amounts of cash and stock would be offset. No stock ever changed hands, and no money ever changed hands. The entire transaction was a fiction.

In explaining the POINT transaction to investors,<sup>197</sup> to the lawyers writing the tax opinions,<sup>198</sup> and to HSBC,<sup>199</sup> Quellos represented that Barnville was contributing a portfolio of stock to each of the entities that would be acquired by the POINT investors. In fact, Barnville had no actual stock to contribute to the entities. Mr. Wilk of Quellos told the Subcommittee that what Barnville owned was a “right” to stock that it had acquired from Jackstones.<sup>200</sup> The stock “rights” were created in five batches, or “tranches,” in the following amounts on the dates indicated:

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<sup>196</sup> Subcommittee interview of Mr. Greenstein (6/28/06).

<sup>197</sup> See, e.g., Confidential Memorandum “Point Strategy” presented to Haim Saban (PSI-QUEL26512-14).

<sup>198</sup> Subcommittee interview of Mr. Steinberg (7/26/06); Subcommittee interview of Mr. Barrie of Bryan Cave (7/28/06).

<sup>199</sup> 11/16/00 HSBC Loan Approval Memorandum (HUI0001876-84) (“Barnville is an investment holding company of US marketable securities with a substantial loss. . . . Under a stock lending arrangement, Barnville has loaned to Jackstones Ltd. (Another Isle of Man co) a stock portfolio.”).

<sup>200</sup> Subcommittee interviews of Chuck Wilk (6/26/06 and 6/28/06). Mr. Wilk stated on 6/26/06 that what Barnville acquired from Jackstones was a promise to deliver stock, rather than the stock itself. He also characterized what Barnville purchased from Jackstones as the “right to economic performance of the stock.” However, he qualified that statement on 6/28/06 by saying that, while he believed that Barnville owned no actual stock, he did not know that for a fact.

<u>Date</u>	<u>Shares</u>	<u>Purchase Price</u>
December 28, 1999	4,307,312	\$ 397,201,727 <sup>201</sup>
January 3, 2000	15,892,025	1,648,791,354 <sup>202</sup>
January 10, 2000	10,141,037	1,160,339,562 <sup>203</sup>
February 28, 2000	32,195,692	3,399,999,848 <sup>204</sup>
June 6, 2000	<u>39,143,000</u>	<u>3,000,154,375</u> <sup>205</sup>
Total	101,679,066	\$ <u>9,606,486,866</u>

For each “tranch” the parties documented the following series of transactions, all of which occurred simultaneously:

1. Jackstones agreed to sell Barnville specified shares of stock for cash. For example, the December 28 agreement stated: “On the Trade Date [December 28, 1999] the Vendor [Jackstones] shall sell as beneficial owner free from all liens, charges, encumbrances and any other security or quasi security interests ... and the Purchaser [Barnville] shall purchase the Purchase Shares.” The consideration for the sale “shall be USD 397,201,727 ... and shall be payable by [Barnville] to [Jackstones] on the Settlement Date [January 3, 2000].” The agreement further provided that “On the Settlement Date, [Jackstones] shall deliver to [Barnville], or procure delivery to [Barnville] of, all instruments of transfer in respect of the Purchase Shares together with all certificates and any other document which may reasonably be required to give full legal title and beneficial title to the Purchase Shares ... or which may be necessary to enable [Barnville] to procure the registration of the same in the name of [Barnville] or its nominee.”<sup>206</sup>

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<sup>201</sup> 12/28/99 Purchase Agreement (PSI-QUEL26591-94).

<sup>202</sup> 1/3/00 Purchase Agreement (PSI-QUEL26595-96).

<sup>203</sup> 1/10/00 Purchase Agreement (PSI-QUEL26597-99).

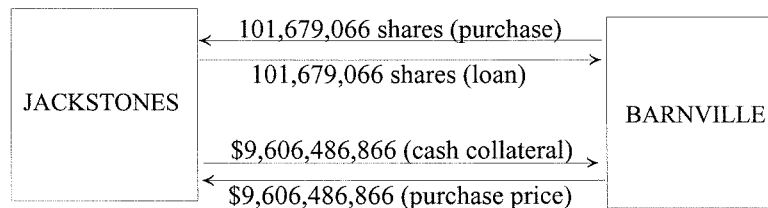
<sup>204</sup> 2/28/00 Purchase Agreement (PSI-QUEL26600-03).

<sup>205</sup> 6/6/00 Purchase Agreement (PSI-QUEL26604-07).

<sup>206</sup> 12/28/99 Purchase Agreement (PSI-QUEL26591-94).

2. Barnville loaned the shares of stock back to Jackstones in exchange for “cash collateral” in the precise amount of the purchase price, to secure return of the shares when called for by Barnville. These loans were made pursuant to a master Securities Lending Agreement executed by Barnville and Jackstones on December 28, 1999, together with a series of “Confirmation” documents on the day of each purchase setting forth the details of the stocks and the amounts of the “cash collateral.”<sup>207</sup>
3. Because Barnville was simultaneously lending back to Jackstones all the shares it was purchasing on each settlement date, no shares ever changed hands between them.
4. Because each purchase agreement permitted Barnville to “set off against the Purchase Price any sum payable by [Jackstones] to [Barnville] on the Settlement Date,”<sup>208</sup> and because Jackstones owed Barnville “cash collateral” in the exact amount of the purchase price, the two amounts were “set off” and no money changed hands.

The five portfolio trades can be illustrated collectively in the following chart:



Thus, at the end of each “Settlement Date,” Barnville and Jackstones were exactly where they started, except that Jackstones was contractually obligated to return the “borrowed” shares to Barnville, and Barnville was obligated to return the “cash collateral” in the amount of the purchase price to Jackstones if and when the shares were “returned.”

<sup>207</sup> 12/28/99 Securities Lending Agreement (PSI-QUEL26608-17); 12/28/99 Confirmation (PSI-QUEL26618-20); 1/3/00 Confirmation (PSI-QUEL26621-23); 1/10/00 Confirmation (PSI-QUEL26624-26); 2/28/00 Confirmation (PSI-QUEL26627-30); 6/6/00 Confirmation (PSI-QUEL26631-33).

<sup>208</sup> See, e.g., 12/28/99 Purchase Agreement, para. 4 (PSI-QUEL26592).



In an email dated July 15, 2006, Euram Structured Products Group Head John Staddon provided written answers to questions posed by the Subcommittee that confirm the phantom nature of these transactions. Mr. Staddon stated:

“It was always the case that the portfolio of securities traded by and between Barnville and Jackstones was of a purely contractual book-entry nature. This was understood by all concerned given the dollar values of the portfolios in question. The sale and purchase of the securities were accomplished through contractual commitments (the Purchase Agreements and related confirmations) which gave rise to legal obligations which were recorded in the entities’ respective books and records. The settlement of these sale and purchase obligations (of delivery on the part of Jackstones and of payment of the purchase price by Barnville) were settled by a process of netting with equal and opposite obligations under stock lending transactions (the Securities Lending Agreements) entered into between them at the same time. Though the transactions occurred off-market, all prices for the constituent shares were determined by reference to market-published prices. ...

“Put another way, Jackstones sold short the underlying securities to Barnville, which it ‘covered’ through borrowing those same securities back from Barnville under the stock loan. From Barnville’s perspective, it was long the stock, but subject to the stock loan with Jackstones. Its purchase of those shares from Jackstones was funded by the cash collateral that Barnville was due to receive from Jackstones under this stock loan. For Jackstones, this creates a short position which renders it liable to re-deliver the stock upon any recall by Barnville or its assignee.

“Because the transactions were conducted in this manner ..., no physical transfer of shares were made. No transactions took place over any exchange and no cash transfers passed between bank accounts of the two companies. ...

“As just described, the stock loan transactions between Jackstones (as borrower) and Barnville (as lender) represents the flip side of the structure to the sale and purchase transactions. The same conclusions can be derived regarding

the nature of the shares that were the subject of those loan transactions. ...”<sup>209</sup>

• According to Mr. Staddon, the fact that the transactions creating the Barnville “portfolio” existed only on paper was well known to Quellos and its counsel:

“This however was always understood to be the case; Euram obtained assurances from Quellos that the book-entry nature of these transactions had been known by the counsel with whom they developed the strategy and that it would be disclosed to any client advisor and opinion provider involved in any subsequent implementation. However, Euram acted on directions of Quellos, including the content and timing of all trading activity and the subsequent transactional steps involving Quellos clients.”<sup>210</sup>

During the planning phase of one of the first POINT transactions, Mr. Staddon sent an email to Chuck Wilk, cautioning him to be sure the client understood what was going on with the Isle of Man part of the transaction: “I know that Chris [Donegan] has already discussed with Jeff [Greenstein] the matter of us needing ... an assurance that the client is fully apprised of the nature of the share trading between the two Isle of Man companies.”<sup>211</sup> Mr. Staddon told the Subcommittee that he was referring (in this and other conversations with Mr. Wilk on the subject) to the book entry nature of the trades. He told the Subcommittee: “we [Euram] were not prepared to accept the risk that the portfolio was described in any other way, or not at all, and which might suggest that the shares were traded on public exchanges.”<sup>212</sup> Mr. Wilk responded to Mr. Staddon: “Client ready to proceed on or about 4/15. Lew Steinberg [of Cravath] does not address the share exchange in his opinion because according to him the client should not know how the shares were contributed to the SPV.”<sup>213</sup> The client is introduced to the ‘product’ (i.e.

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<sup>209</sup> 7/15/06 email from Mr. Staddon to the Subcommittee.

<sup>210</sup> *Id.*

<sup>211</sup> 4/4/00 email from Mr. Staddon to Chuck Wilk (PSI-QUEL22475-76, at 76).

<sup>212</sup> 7/24/06 email from Mr. Staddon to the Subcommittee.

<sup>213</sup> Mr. Steinberg told the Subcommittee that he did not remember any conversation such as that described by Mr. Wilk in his email to Mr. Staddon. He added that he would not advise one client (such as Quellos) not to reveal a material fact to another client (such as a POINT investor). He also said it was his understanding, as set forth in his legal opinion, that what the investment partnership acquired was actual shares of stock acquired from a hedge fund that had ownership of shares that had gone down in value while it held them, and that he had no idea what Mr. Wilk and Mr. Staddon were referring to in their email exchange about the “nature of

the HYPO structure) and purchases it as a high yield investment.”<sup>214</sup>  
This response did not satisfy Mr. Staddon, who replied:

“I obviously understand Lew’s approach, but there is a commercial risk that both you and I know only too well and that is that the client turns around under a certain scenario and claims to have been misled as to the nature of the share trading between the two IoM companies. Speaking for Euram, we either need to know that the client and its advisors are aware of how the share trades are entered into or, if this is not possible, then we need to understand how it is that there will be no possible come back from the client at a later stage if everything does not go to plan.”<sup>215</sup>

The Quellos emails do not contain a record of how this issue was resolved, nor do Euram’s records, but Mr. Staddon told the Subcommittee in a written statement that he was “certain that Euram would not have provided its services without having obtained assurances that the appropriate disclosures would be made, and for our part we proceeded on that basis.”<sup>216</sup>

The two POINT investors interviewed by the Subcommittee each stated that he had not been informed of the nature of the securities trades between Barnville and Jackstones or the fact that all of the rights and obligations in those transactions were completely offsetting.<sup>217</sup>

### **Relation of Barnville to Jackstones and Significance of Situs in Secrecy Jurisdiction**

Because the original purchases by Barnville from Jackstones of the securities in the portfolio from which the investors’ “baskets” were selected is the foundation of the entire POINT strategy, understanding the facts about those purchases and the degree to which they were arm’s

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the share trading between the two IoM companies.” Subcommittee interview with Mr. Steinberg (6/26/06).

<sup>214</sup> 4/4/00 email from Mr. Wilk to Mr. Staddon (PSI-QUEL22476).

<sup>215</sup> 4/4/00 email from Mr. Staddon to Mr. Wilk (PSI-QUEL22475).

<sup>216</sup> 7/19/06 letter from Subcommittee Minority Counsel to Mr. Staddon, with attachments and email reply dated 7/24/06. This resolution is also implied in an 4/28/00 email from Mr. Staddon to Mr. Wilk (PSI-QUEL10704) (“Finally, I know that we discussed this for Woody and his trades, but I also need confirmation from you that [client name redacted by Subcommittee] and/or his advisors is aware of the book entry features of the structure.”).

<sup>217</sup> Subcommittee interview of Mr. Johnson (7/20/06); Subcommittee interview of Mr. Saban (7/19/06).

length is critical to determining the allowability of the claimed tax losses. However, the true relationships among Barnville, Jackstones, and Euram (as well as other offshore entities discussed below) and the facts about those entities' finances are secret under Isle of Man law and custom, and the trust companies and corporate administrators who created and administered those companies in the Isle of Man declined to provide any information to the Subcommittee about this and other similar matters.<sup>218</sup>

The Isle of Man Financial Supervision Commission did provide the Subcommittee with copies of public records pertaining to Barnville and Jackstones, but the records do not reveal those entities' beneficial ownership. Under Isle of Man law, companies chartered there are required to file annual reports listing the names of the owners of all company stock, the amount of capital invested in the company, the directors of the company, and, since about 1989, the company's principal trade or business. These returns are available for public inspection, and the Financial Supervision Commission provided copies of all returns filed on behalf of several entities requested by the Subcommittee.

The records show that Barnville was incorporated February 11, 1998, with one share of stock each subscribed to by Paul Moore on behalf of Claycroft Limited and Paul Moore on behalf of Dalecroft Limited.<sup>219</sup> Annual returns were filed on behalf of Barnville by Triskelion Trust Company Ltd. for every year since its incorporation until it was dissolved in August 2004. These returns show that Barnville's stock ownership remained the same, that its directors were always Paul Moore, Ann Nicholson, and Pamela Ann Young (all of the Isle of Man), that its principal business was "investments," and that its authorized capital was 2,000 British pounds of which 2 pounds had been paid in.<sup>220</sup>

Claycroft Limited and Dalecroft Limited are Isle of Man companies whose sole function appears to be to hold the shares of other companies and corporations as nominees for the true owners. Both were

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<sup>218</sup> 6/9/06 letter request by the Subcommittee to Standard Bank Investment Corporation (Isle of Man) Limited (owner of Triskelion Trust Company Limited) and 6/14/06 reply. The Subcommittee did not request information from Trident Trust in connection with this transaction, because Trident had recently declined to provide information on the Wyly related Isle of Man entities, as discussed below.

<sup>219</sup> Memorandum of Association of Barnville Limited.

<sup>220</sup> See, e.g., 2/12/01 Annual Return of a Company having a Share Capital of Barnville Limited.

incorporated on August 14, 1981, by a firm of Chartered Accountants, Snelling Tucker Moore & Co.<sup>221</sup> The initial subscribers of the company stock were Neville Cooper Billington and Richard Lawford Duncan Tucker at one share each.<sup>222</sup> The subscribers immediately appointed members of Snelling Tucker Moore as directors.<sup>223</sup> By 1983, the two shares of each company had been transferred to David Henry Snelling, who owned one share of each company, and to Claycroft and Dalecroft, each of whom owned one share of the other's stock.<sup>224</sup> The annual returns were filed by a succession of entities<sup>225</sup> including Triskelion Trust Co. from 1999 through 2006.<sup>226</sup> In 1998, Mr. Snelling transferred his share of each company to Paul Moore, but Claycroft and Dalecroft continued to own one share of each other's stock.<sup>227</sup> This ownership continues to date. All returns for both companies show total authorized capital of 2,000 British pounds and two shares issued, with 2 British pounds of capital contributed. All returns of both companies since 1989 show the principal trade or business as "nominee."<sup>228</sup>

The Isle of Man records show that Jackstones Limited was incorporated on April 26, 1999, that its principal business was "holding company," and that the initial issue of one share of stock was subscribed to by Trident Nominees (IOM) Limited.<sup>229</sup> Annual corporate returns show that Trident Nominees was replaced as the shareholder in 2000

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<sup>221</sup> 8/14/81 Declaration of Compliance with Requirements of the Companies Act – Dalecroft Limited; 8/14/81 Declaration of Compliance with Requirements of the Companies Act – Claycroft Limited.

<sup>222</sup> Memorandum of Association of Dalecroft Limited; Memorandum of Association of Claycroft Limited.

<sup>223</sup> Subscribers' Resolution Appointing the First Directors of Dalecroft Limited; Subscribers' Resolution Appointing the First Directors of Claycroft Limited.

<sup>224</sup> 3/4/83 Annual Return of a Company having a Share Capital – Dalecroft Limited; 3/4/83 Annual Return of a Company having a Share Capital – Claycroft Limited.

<sup>225</sup> From 1983 through 1987, the returns were filed by Snelling Moore & Co. From 1988 through 1998, they were filed by Europlan Trust Co. at the same address as Snelling Moore and Co., and from 1999 to 2006, they have been filed by Triskelion Trust Co., which used the same address as Europlan Trust had, until 2004, when Treskilion Trust was acquired by Standard Bank (IOM) and moved to their address.

<sup>226</sup> See, e.g., 1/14/00 Annual Return of a Company having a Share Capital – Dalecroft Limited; 1/14/00 Annual Return of a Company having a Share Capital – Claycroft Limited.

<sup>227</sup> 1/14/98 Annual Return of a Company having a Share Capital – Dalecroft Limited; 1/14/98 Annual Return of a Company having a Share Capital – Claycroft Limited.

<sup>228</sup> 1/14/00 Annual Return of a Company having a Share Capital – Dalecroft Limited; 1/14/00 Annual Return of a Company having a Share Capital – Claycroft Limited.

<sup>229</sup> Memorandum of Association of Jackstones Limited; 4/28/00 Annual Return of a Company having a Share Capital of Jackstones Limited.

through Jackstones' dissolution in 2004 by Sanne Corporate Nominees Limited.<sup>230</sup> All these returns were filed by Trident Trust Company. Sanne Corporate Nominees Limited and its affiliate Sanne Corporate Services Limited appear to have some connection with Trident or its employees.<sup>231</sup>

Quellos representatives Chuck Wilk and Jeffrey Greenstein disclaimed any knowledge of Barnville's and Jackstone's ownership, other than to say that Euram must have had some relationship with those companies, because Quellos communicated with Barnville and Jackstones through Euram.<sup>232</sup> Chuck Wilk said Quellos relied on Euram, which he said told him they knew the ownership of Barnville and Jackstones, in concluding that the two companies were independent of one another. Jefferey Greenstein said that Euram assured them the counterparties (Barnville and Jackstones) had the wherewithal to deliver on their mutual promises. Both insisted that Euram was a large and respectable European banking organization and that it was appropriate to rely on them for their aspects of the transaction.<sup>233</sup>

Euram Structured Products Group Head John Staddon told the Subcommittee that it was Quellos who wanted offshore entities involved in the creation of the portfolio:

"Soon after its inception in late 1999, Euram was approached by the Quellos organization to provide [execution] services for a transactional structure Quellos had developed with US counsel and which it had expected to implement with its own client base. Specifically, the structure in question (which was generically referred to by Quellos as the "Point" strategy) involved the deployment of two offshore entities which would engage in a mutual trading program relating to US publicly traded securities . . . ."

Mr. Staddon told the Subcommittee that Euram did not know who owned Barnville and Jackstones:

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<sup>230</sup> See, e.g., 4/28/00 Annual Return of a Company having a Share Capital of Jackstones Limited.

<sup>231</sup> The authorized signatories for Sanne Corporate Services Limited on behalf of Jackstones include David Bester, Richard Scott, and Gordon Mundy, three of the individuals from Trident Trust who served as officers of some of the Wyly related offshore corporations managed by Trident Trust.

<sup>232</sup> Subcommittee interview of Mr. Wilk (6/26/06 and 6/28/06); Subcommittee interview of Mr. Greenstein (6/28/06).

<sup>233</sup> *Id.*

“Euram had no direct relationship with any of these entities. Euram was involved in seeking the services of a third party corporate administrator with suitable contacts in the Isle of Man who obtained the use of Barnville and Jackstones for the trading activity in question.”<sup>234</sup> Claycroft and Dalecroft [the nominal owners of the Barnville shares] are known to us as companies that were typically used by the Isle of Man administrator (Treskillion Trust Company) as holders of subscriber shares for newly formed entities.

Euram has no and has never had any ownership interest in any of these entities. Nor did Euram control any of them. On one occasion Euram did obtain a power of attorney from the directors of Barnville and Jackstones to execute certain transaction documents on their behalf outside of Isle of Man working hours. We believe that Barnville and Jackstones were ultimately held under common beneficial ownership, although we do not have personal knowledge of the identity of the beneficial owner or owners. We likewise do not know the beneficial owners of Claycroft and Dalecroft.”<sup>235</sup>

Although Quellos and Euram both claim to have no knowledge of who was behind Barnville and Jackstones, HSBC was told a different story when the POINT strategy was described to it in an effort to secure the bank’s assistance in providing financing for three of the trades. For example, in a memorandum related to a loan committee recommendation, HSBC summarized what it understood from Quellos about Barnville and Jackstones:

“Barnville Limited and Jackstones Limited are Isle of Man companies each owned by a trusts [sic] with mutually overlapping boards. Both Barnville and Jackstones are Investment Companies organized and managed by EURAM Advisors, . . . a subsidiary of EURAM Bank AG from Vienna Austria. The Barnville and Jackstones boards are different enough so as not to be considered controlled by the same person or group of persons.”<sup>236</sup>

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<sup>234</sup> 7/24/06 email from Mr. Staddon responding to a 7/19/06 letter from the Subcommittee (clarifying that, although his dealings were with Triskelion Trust, Jackstones was actually administered by Sanne Corporate Services Limited, apparently at Triskelion’s behest).

<sup>235</sup> 7/15/06 email from John Staddon to the Subcommittee.

<sup>236</sup> Untitled memorandum pertaining to HSBC loan commitment (HUI0000885-87, at 86).

In an August 22, 2001 email relating to HSBC's request for ownership information in connection with its anti-money laundering due diligence, Euram's John Staddon wrote to Chuck Wilk:

"Barnville is owned jointly by Claycroft Limited and Dalecroft Limited, both Isle of Man companies. Jackstones is wholly owned by Sanne Corporate Nominees, Limited. Each of these corporate owners are nominee companies controlled and administered by two separate trustee and corporate administration operations in the IoM. I am not at all keen on revealing the ultimate beneficial owner. If there is persistence on it by HSBC, then I guess we can certify that the person in question is an existing client of Euram Bank and that we can testify for his reputation and good standing accordingly."<sup>237</sup>

Although this email clearly suggests that one person was the beneficial owner of both Barnville and Jackstones, Mr. Staddon explained in a written statement submitted to the Subcommittee that what he was suggesting to Mr. Wilk in the above-quoted language is that:

"[I]f HSBC insisted upon knowing the identity of the ultimate beneficial owner(s) of those entities, then I would press for disclosure of their identities from the Isle of Man administrators. As a hypothetical way to resolve the question, those ultimate beneficial owners could then become clients of Euram Bank, which would undertake a 'know your client' review of them, from which we would then be able to provide an interbank assurance as to their reputations and net worth. This never came to pass, and so that process did not take place and the individual(s) concerned did not become clients of Euram Bank. We did not seek to verify the ownership structure of those entities any further."<sup>238</sup>

Chuck Wilk forwarded the Staddon email to Brian Hanson with the instructions to "keep this for our records but do NOT forward to HSBC. They approved the deal this morning without this information."<sup>239</sup> When Barnville opened an account at HSBC in 2001, the account application, signed by Barnville director Paul Moore, indicated that the owners were

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<sup>237</sup> PSI-QUEL08905.

<sup>238</sup> 7/24/06 letter from Mr. Staddon to the Subcommittee, responding to a Subcommittee letter dated 7/19/06.

<sup>239</sup> 8/22/01 email from Mr. Wilk to Mr. Hanson (PSI-QUEL08905).



Claycroft Ltd (50 %) and Dalecroft Ltd (50%). Moore also certified that the source of Barnville's cash flow was not profits on the purchase and sale of securities, but "fees from sales transactions." A narrative description of unusual expected account activity stated: "Barnville is an SPV set up to engage in trading/investment in technology stock. The HSBC A/C is used when stock is sold to 3<sup>rd</sup> parties. The amounts that flow through the account are large but then quickly go to zero as the revenues are used to buy stock from the market/other parties some in excess of \$100,000,000. Approx 3 transactions take place a year."<sup>240</sup> When HSBC later updated its due diligence in 2003, its Know Your Customer form reported that "Barnville is a wholly owned subsidiary of European American Investment Bank, an Austrian Investment Bank. Barnville is used to facilitate the sale of investment assets."<sup>241</sup>

HSBC did not have equivalent KYC information for Jackstones, which also had an account at the bank. However, the bank did receive powers of attorney giving Euram employees John Staddon and Rajan Puri authority to open and manage accounts for both companies,<sup>242</sup> and the account opening forms for both entities were forwarded together to Mr. Puri by HSBC.

From the above facts, it appears that there are several versions of Barnville/Jackstones ownership. In the final analysis, no one was able to tell the Subcommittee who was really behind Barnville and Jackstones or whether, as appears from the circumstances, they had common ownership. Quellos said they did not know who the owners were and that they relied on Euram to vouch for the Isle of Man entities. Euram said it was Quellos who wanted the paper portfolios created through two offshore entities in a "mutual trading program" and admitted arranging the Barnville/Jackstones "trades," but insisted they did not know who owned the companies. HSBC did not require the information under their Know Your Customer due diligence practices at the time. The only people who possess this information, which is critical to determining the truth about these \$9.6 billion transactions, are the trust and corporate administrators in the Isle of Man, who are barred by law and custom from revealing it.

Because Barnville and Jackstones were incorporated and administered in the Isle of Man, where strict financial secrecy is

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<sup>240</sup> 12/26/03 HSBC Know Your Client form (HUI0002297-301).

<sup>241</sup> *Id.*

<sup>242</sup> Power of attorney and passport photo (Rajan Puri) for Barnville, Ltd. (HUI0002295, HUI0002302); powers of attorney (2) and passport photo (Rajan Puri) for Jackstones, Ltd. (HUI0002323-25).

observed, it is also impossible to obtain direct evidence whether either of these companies had any assets other than the contracts with each other, or whether either company had any means of paying the other when the market inevitably moved the value of the stocks so that one gained and the other lost on the transactions. However, on the annual returns filed with the Isle of Man Financial Supervision Commission, both Barnville and Jackstones reported total authorized capital of 2,000 British pounds (of which 2 pounds were paid in for Barnville and 1 pound was paid in for Jackstones).<sup>243</sup> Each return of both Barnville and Jackstones, including the returns for the period in which Barnville and Jackstones were purportedly trading in securities to the tune of \$9.6 billion, reported a total outstanding indebtedness of “nil.”<sup>244</sup> It is doubtful, to say the least, that either had the ability to make good on obligations totaling over \$9.6 billion.

### **The POINT Transactions**

As previously noted, Quellos assisted six clients to conduct six separate transactions over the period 2000 through 2002. These transactions fell into two distinct groups that differed primarily in the degree to which they required outside cash to accomplish the trade. The first three transactions were arranged for Quellos clients Robert Wood Johnson, IV of New York, and two other individuals from New York and Texas. All of their trades were conducted and “unwound” in 2000, although the documentation was not completed until the following year. The second group of transactions involved two trades for two Quellos clients in New York and one transaction for Haim Saban of Los Angeles California. These trades were conducted and “unwound” in late 2000 and 2001, although their documentation was also not completed until 2002. Because the trades within each group were quite similar, the Subcommittee chose to focus on one transaction from each group – Mr. Johnson’s from the first group and Mr. Saban’s from the second. However, some emails pertaining to the other clients will be considered below, to the extent that they shed light on what happened to all of the transactions in the same group.

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<sup>243</sup> See, e.g., 2/12/01 Annual Return of a Company having a Share Capital of Barnville Limited; 4/28/00 Annual Return of a Company having a Share Capital of Jackstones Limited.

<sup>244</sup> Section 79 of the Isle of Man Companies Act 1931 defines the “registrable charges” that must be reported as indebtedness on the annual returns as including “a charge on book debts of the company.” A representative of the Isle of Man Attorney General has advised the subcommittee that Barnville’s claimed obligation to return the cash collateral to Jackstones might create such a charge, but that it would be necessary to review the documents to be sure. 7/27/06 email from Lindsey Bermingham of the Isle of Man Attorney General’s office to the Subcommittee.

**Reka Transaction (Robert Wood Johnson IV)**

Robert Wood Johnson IV is a member of the founding family of pharmaceutical giant Johnson & Johnson. He is chairman and CEO of The Johnson Company, Inc., and has owned the New York Jets football team since 2000. He is Executive Chairman of the Juvenile Diabetes Foundation and is active in numerous other charities.<sup>245</sup> He is referred to as “Woody” in some Quellos documents. He was represented in many of his dealings with Quellos by Johnson Family Chief Financial Officer Joel Latman.

Mr. Johnson told the Subcommittee that his purchase of the New York Jets in 2000 was financed in part by the proceeds of the sale of securities at a substantial capital gain. Since, in any large financial enterprise such as his, taxes are viewed as one of many expenses, he asked Larry Scheinfeld, his long term financial accountant at KPMG, to begin looking for ways he could mitigate the capital gain tax on the securities sales he was planning. This was around the time Mr. Scheinfeld left KPMG to join Quellos. After a few followup inquiries by Mr. Johnson, Mr. Scheinfeld indicated he might have found an idea that would help. Mr. Johnson said he did not remember any details, but that Mr. Scheinfeld proposed a method of deferring taxation of the capital gain to future years.<sup>246</sup>

It appears from the documents reviewed by the Subcommittee that Quellos was proposing a loss importation strategy for Mr. Johnson before the POINT strategy was developed,<sup>247</sup> and he was expressing an active interest in POINT as early as October 28, 1999.<sup>248</sup> Mr. Johnson had tentatively decided to purchase the POINT strategy by December 20, 1999, when Mr. Scheinfeld emailed Mr. Wilk and Mr. Greenstein: “Joel [Latman] called, he has given us the full speed ahead (whatever that means) . . .”<sup>249</sup> Mr. Greenstein asked in response: “Are we firm on

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<sup>245</sup> Bloomberg Profile on Robert Wood Johnson IV (PSI-QUEL06922-27).

<sup>246</sup> Subcommittee interview of Mr. Johnson (7/20/06).

<sup>247</sup> Memorandum on Quadra Custom Strategies, LLC Gain Deferral Trade “given to Woody by LBS” (PSI-QUEL10925-26).

<sup>248</sup> 10/28/99 email on “POINT” from Mr. Scheinfeld to Mr. Greenstein (PSI-QUEL10600)(“Woody called to make sure everything is moving forward.”). See also 12/22/99 email from Mr. Wilk to Mr. Scheinfeld (PSI-QUEL22601)(“Woody called today to make sure we are working on his case. I assured him we were.”).

<sup>249</sup> 12/20/99 email from Mr. Scheinfeld to Mr. Wilk (PSI-QUEL11570).

100 or 200 [million dollars]?”<sup>250</sup> Mr. Wilk answered: “\$300MM; 150 for [redacted by Subcommittee] and 150 for Woody. Ain’t capitalism great!”<sup>251</sup> On January 11, 2000, Chuck Wilk emailed Larry Scheinfeld: “Well I guess congratulations are in order but boy do we have our work cut out for us now on POINT.” Mr. Scheinfeld replied: “Now I just hope Woody doesn’t get cold feet or have the IRS select his return for audit!”<sup>252</sup>

The fees for the transaction were pegged to the amount of the loss. For example, an internal Quellos email written at a time when the amount of loss needed by Mr. Johnson was thought to be \$135 million stated: “The total [present value] fee of 2.7mm is 2% of the 135mm notional amount of the trade.”<sup>253</sup> The fee was not necessarily to be paid in the form of a transaction fee, but was nevertheless known to be a fee calculated as a percentage of the loss. For example, in the Johnson case, the fee took the form of a stream of monthly payments under an “advisory agreement,” but was still seen by Quellos as a transaction fee. An October 25, 2001 email between Quellos employees Brian Hanson and Andrew Robbins referred to the “2% fee paid in form of advisory agmt w/RWJ for \$2.9 [million].”<sup>254</sup> In an interview with Subcommittee staff, Chuck Wilk pointed out that any number can be expressed as a percentage of any other number, and denied that Quellos’ fee for setting up the transaction was intended to be a percentage of the loss.<sup>255</sup> However, Brian Hanson stated that he believed Quellos’ fee was tied to the losses generated, and that he most likely learned that from Mr. Wilk.<sup>256</sup> He also said that a fee that was two percent of the loss was the target, although he was not sure if the fee ended up at precisely two percent on all the trades. He indicated that he typically would feed in a factor of two percent for Quellos’ fee whenever he would run a computer model of a POINT transaction. Jeffrey Greenstein stated that the amount of the loss generated by the transaction was the “starting point for the fee in negotiations.”<sup>257</sup> However, in an email to Chuck

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<sup>250</sup> 12/20/99 email from Mr. Greenstein to Mr. Scheinfeld and Mr. Wilk (PSI-QUEL11570).

<sup>251</sup> 12/20/99 email from Mr. Wilk to Mr. Greenstein (PSI-QUEL11570).

<sup>252</sup> 1/11/00 email from Mr. Wilk to Mr. Scheinfeld and response (PSI-QUEL10680).

<sup>253</sup> 4/17/00 email from Mr. Baier to Norm Bontje, Mr. Wilk, and Mr. Scheinfeld (PSI-QUEL10633).

<sup>254</sup> 10/25/01 email from Mr. Hanson to Andrew J. Robbins (PSI-QUEL25004).

<sup>255</sup> Subcommittee interview of Mr. Wilk (6/6/00).

<sup>256</sup> Subcommittee interview of Mr. Hanson (6/27/00).

<sup>257</sup> Subcommittee interview of Mr. Greenstein (6/28/00).

Wilk on planning one client's transaction, he observed that an increased loss would result in increased fees because the fees "are based on the loss amount."<sup>258</sup>

According to Mr. Wilk, the POINT strategy was originally designed to have the client's purchase of the LLC from Barnville funded with cash or borrowing. However, that was changed for the first three transactions because Mr. Johnson had another business transaction pending that was using up his cash and borrowing ability. Quellos therefore arranged for the POINT transactions for Mr. Johnson and another client to be "seller financed," or funded with Mr. Johnson's entity's promise to pay for the trading company with the loss stock in the future. Since Quellos had things set up that way when the third client decided to invest, Quellos used the same form for his transaction, but later followed the original plan for the next three transactions.<sup>259</sup>

Quellos presented the POINT trade to Mr. Johnson's representatives as an opportunity to purchase a tax loss for cash, some of which might be offset by fluctuations in value of the stock purchased. On February 11, 2000, Jeffrey Greenstein wrote to Joel Latman at the Johnson Company:

"We approximate the upfront cash requirements to be 6-7% of the anticipated losses (\$300,000,000) plus the NPV of 1% paid over multiple years. This cash requirement is a worst case scenario. If the basket of stocks modestly appreciates (between 1-5% from the purchase price) then all or a portion of the cash requirement will be available on expiration of the six month collar. If the stocks appreciate 5% or more then the maximum cash return will generate a net profit (after fees/costs) of 3% on the entire \$300,000,000. Depending on market movements during the six month collar we may have the flexibility to liquidate the position early and recoup a good portion of the initial cash."<sup>260</sup>

That the securities investment was viewed as a way to cover part of the fees if the stock went up is also suggested by an internal Quellos email discussing a conversation with a client's lawyer about when to get out of the trade:

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<sup>258</sup> 11/10/00 email from Mr. Greenstein to Mr. Scheinfeld and Mr. Robbins, cc: Mr. Wilk (PSI-QUEL25003).

<sup>259</sup> Subcommittee interview of Mr. Wilk (6/26/00).

<sup>260</sup> 2/11/00 fax from Mr. Greenstein to Joel Latman (PSI-QUEL10920).

“Leslie just phoned me to talk about profitability. Amongst a few other items, he wanted to let me know that they want out as soon as they’re in the black (net of fees).”<sup>261</sup>

Quellos and the lawyers made numerous references to the “optics” of the transactions and the need to document their “economics.” Internally, Quellos referred to the transaction as a “tax trade,”<sup>262</sup> but for documents going to third parties, an attempt was always made to emphasize the non-tax aspects of the trade. For example, in an email on April 4, 2000, Chuck Wilk wrote Chris Hirata: “The first transaction is scheduled to close 4/15. . . . We need to put a ‘one pager’ together describing the trade in both economic and tax terms (but a little fuzzy on the tax piece).”<sup>263</sup>

Internal Quellos memoranda show that, although the warrants were held out as providing the potential profit and the non-tax business purpose of the structure, Quellos never intended that the warrants would actually be sold into the market. Rather, Quellos intended that the warrants would be redeemed, giving back the premiums that were supposed to be the source of the economic profit. A draft outline of the POINT trade dated August 5, 1999 explained three different reasons why the warrant was critical to the tax purpose of the scheme. First, the Trading Partnership (which had to hold the loss stock in order to give the tax loss to the U.S. taxpayer), could be justified as being necessary for a non-tax purpose of making the warrant more marketable.<sup>264</sup> Second, the outline explained that the warrant would also help the structure look like a normal European financial product: “the equity ownership of the SPV now has a payoff pattern that resembles securities regularly issued by European investment banks and commonly referred to as BLOCS or HYPOS.”<sup>265</sup> Third, the outline made clear that the source of the purported economic profit on the transaction was going to be the warrant premium: “The premium received from selling the option/warrant is

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<sup>261</sup> 11/19/01 email from Mr. Hanson to Mr. Robbins and Mr. Wilk (PSI-QUEL25005).

<sup>262</sup> See, e.g., 4/11/00 email from Mr. Scheinfeld to Bart Anderson and John Baier (PSI-QUEL10631) (“Woody will be using the money in his account to do his tax trade.”).

<sup>263</sup> 4/4/00 email from Mr. Wilk to Mr. Hirata (PSI-QUEL22490).

<sup>264</sup> 8/5/99 email from Mr. Greenstein to Mr. Wilk (PSI-QUEL22581-82) (“attached are some initial thoughts.”) and attached draft outline (“To satisfy warrant purchasers concern regarding Fund’s ability to deliver underlying stock if the warrant is exercised, Fund creates bankruptcy remote entity and deposits asset(s) in SPV (*that must be taxed as a partnership for U.S. tax purposes*).”) (Emphasis in original).

<sup>265</sup> *Id.*

used to pay the owner an attractive yield substantially above comparable securities.”<sup>266</sup>

The projections prepared by Quellos for Mr. Johnson and his advisors confirm that the purported ability of the transactions to produce economic profit was almost entirely dependent on the premium earned from the sale of the warrant, or the “BLOC” portion of the structure. These projections claimed that, with a \$54,085,290 premium from a warrant invested to produce extra income, the POINT strategy would produce a profit for Mr. Johnson of from \$20 million to \$76 million, under virtually every scenario. However, subtracting the warrant premium from the calculations shows that, if the warrant were never issued into the market to produce the premium, the strategy would lose money unless the underlying stock went up substantially, and even then the amount of possible income would be much smaller.<sup>267</sup>

In other words, if the warrant were removed from the calculus, the prospect for profit was all but eliminated unless the prices of the stocks in the portfolio rose very substantially. The evidence reviewed by the Subcommittee shows that there was never any intent to profit from the issuance of a warrant. According to the August 5, 1999 outline of the POINT transaction, the next step after the U.S. taxpayer purchases the SPV [Trading Partnership] containing the loss stock and the warrant premium, and puts the previously held stock that is about to realize a gain into the SPV [Trading Partnership], is to liquidate the assets and

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<sup>266</sup> *Id.*

<sup>267</sup> One series of projections presented three different scenarios: One year duration of the trade with the warrant outstanding, one year duration with the warrant hedged, and five year duration with the warrant outstanding. The first one year projection showed profits of \$22 million to \$60 million regardless of whether the stock in the “basket” went down 20 percent, stayed flat, or went up 20 percent. Schedule labeled “POINT - One Year Duration (Warrant Outstanding)” (PSI-RWJ000268). However, if the \$54,085,290 to be earned on the warrant premium is subtracted from the calculation, the projections would show a \$32 million loss if the stock declined 20 percent, a \$14 million loss if the stock stayed flat, and a \$6 million profit only if the stock went up 20 percent by the end of the year. The second one year projection, with the warrant “hedged,” showed \$4 million to \$7 million losses if the stock stayed flat or declined 20 percent, but a \$1.5 million profit if the stock went up 20 percent. Schedule labeled “POINT - One Year Duration (Warrant Hedged)” (PSI-RWJ000269). If the warrant premium and interest (and offsetting hedging costs) are eliminated from the calculation, the projections would again show a \$32 million loss if the stock declined 20 percent, a \$14 million loss if the stock stayed flat, and a \$6 million gain if the stock appreciated 20 percent. The five year projection showed a loss of \$10 million if the stock declined 50 percent, a \$24 million profit if the stock stayed flat, and a \$76 million profit if the stock went up 50 percent. Schedule labeled “POINT - Five Year Duration (Warrant Outstanding)” (PSI-RWJ000270). However, if the warrant premium and earnings are removed from the calculation the projected results would be a \$78 million loss if the stock declined 50 percent, a \$44 million loss if the stock stayed flat, and an \$8 million profit if the stock went up 50 percent.

redeem the warrant.<sup>268</sup> A second version of the outline created six days later stated the plan more clearly: “Subsequent to the closing on the ownership units, [Quellos] evaluates the economic benefit of leaving the covered warrants out in the market and decides to ... redeem the warrant.”<sup>269</sup>

Although a Warrant document and a subscription agreement were signed by the Trading Partnership and a Euram subsidiary in each of the transactions, no money ever changed hands. Each subscription agreement contained a provision permitting the subscriber to “put” the warrant back to the issuer at any time if the underlying stock was sold,<sup>270</sup> and another provision permitting the subscriber to hold on to the premium (in an account in the name of the issuer)<sup>271</sup> until the warrants were exercised or put back to the issuer.<sup>272</sup> In each actual transaction, the underlying stock was sold within one to two months and the warrant was returned to the issuer, with no gain or loss to either party. That all this was pre-arranged is indicated not only by the 1999 outlines, but by the fact that the warrant “unwind” documents for at least one of the other transactions were prepared in advance of the transaction.<sup>273</sup> A draft checklist for the same transaction showed the “warrant unwind agreement” scheduled for 14 days after the warrant was to be issued.<sup>274</sup> In addition, in the Saban transaction, discussed below, some of the profit

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<sup>268</sup> 8/5/99 email from Mr. Greenstein to Mr. Wilk and attached draft outline (PSI-QUEL22581-82)(“attached are some initial thoughts.”).

<sup>269</sup> 8/11/99 email from Mr. Wilk to Mr. Greenstein and attached draft outline (PSI-QUEL22589-91).

<sup>270</sup> See, e.g., Titanium Trading Partners/EA Investment Services Ltd. Subscription Agreement at para. 6 (PSI-QUEL26697-703).

<sup>271</sup> It is not clear that the BVI entity EA Investment Services Ltd. ever had any funds with which to pay the premium. When Quellos needed an account statement to document the premium amount and interest earned for one of the transactions, it had to provide EA Investment Services with a format to use in preparing a statement. 7/27/00 email from Mr. Hansen to Rajan Puri (PSI-QUEL11432-33)(“I assume that at some point we are going to get account statements from these guys, right??? Maybe you can work on them for some. Also, how about EurAm statements that reflect the Warrant premium deposit and accrued interest??? I sent John [Staddon] a copy of what we think a statement should look like.”). See also 7/31/00 email from Mr. Puri to Mr. Hirata (PSI-QUEL11267)(sending back “draft BVI interest statements” for Quellos review).

<sup>272</sup> See, e.g., Titanium Trading Partners/EA Investment Services Ltd. Subscription Agreement at para. 2(c) (PSI-QUEL26697-703).

<sup>273</sup> See, e.g., 9/4/01 email from Shaikh Arfan [Euram] to Mr. Hansen (PSI-QUEL23128-30).

<sup>274</sup> Draft “Titanium Checklist” (PSI-QUEL29273-77).



projections actually assumed that the warrant would be put back, and the cost of doing so exactly cancelled out the premium received.<sup>275</sup>

The warrant issued by the trading partnership was even referred to by Euram as a “virtual” warrant. In an email on the drafting of the warrant documents, Rajan Puri of Euram explained to Chris Hirata and Chuck Wilk why a particular drafting suggestion was not being accepted:

“John [Staddon] consciously excluded element (b) . . . from his draft; this is because we believe this is an unusual term, which is unnecessary given the “virtual” nature of the warrant issue . . . the last thing we want to do is draw attention to this element of the structure, by inserting unusual, or non-market standard terms into the documents.”<sup>276</sup>

It is clear from the correspondence that the “economics” were designed to improve the appearance of the transactions for tax purposes, and that all parties were in reality focused almost exclusively on the tax loss to be acquired. For example, an email from Quellos employee Andrew Robbins to Mr. Wilk on April 17, 2000, described a conversation with Mr. Johnson’s representatives in which they asked for more details on a series of questions.<sup>277</sup> All of the questions pertained to the costs of implementing the plan and how the costs would be financed. Neither this email nor any other makes any mention of a concern on the part of Mr. Johnson or his representatives over the profit making aspects of the transaction.<sup>278</sup> A week later, Joel Latman sent a fax to Mr.

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<sup>275</sup> Profit/Loss Projections labeled “2000 Trading Partners, LLC” (PSI-QUEL36835-51).

<sup>276</sup> 4/18/00 email from Mr. Puri to Mr. Hirata and Mr. Wilk (PSI-QUEL13285-86).

<sup>277</sup> 4/17/00 email from Mr. Robbins to Mr. Wilk (PSI-QUEL22570).

<sup>278</sup> A different POINT investor apparently did not realize that the investment in the basket of stock was hedged against loss if the stock prices declined after the transaction started and thought that the decline in tech stocks then underway would result in a real loss. Several days into his trade, he wrote Mr. Greenstein:

“Dear Jeff:

“For two years now I have studiously averted the overhyped NASDAQ. My disdain for those stocks must have been obvious from my lack of interest in choosing the ones which went into our portfolio. I had no idea that your structure was a speculation on the NASDAQ and had I known I would have never entered into it. I cannot understand how you in all good conscience could even suggest such a thing after April’s carnage. It really makes me question [Quellos’] judgement and worry about the other money I have with you. I have been absolutely miserable for the past two weeks as a result of this partnership. I want

Robbins transmitting documents on the formation of two entities being formed by Mr. Johnson for use in the transaction and concluding: "The amount of loss that we can use should be \$145 [million]." <sup>279</sup> Mr. Robbins immediately wrote Chuck Wilk that "The number they want is \$145.0." <sup>280</sup>

The Johnson trades took place on May 5, 2000. As it was ultimately documented, the following events took place on May 5:

- Barnville contributed the Johnson "basket" of stocks selected from the original Barnville/Jackstones portfolio to Reka Limited, a Cayman Islands Limited Liability Company previously formed on April 11, 2000, <sup>281</sup> for the purpose of holding the shares, in exchange for 1,000 shares of Reka stock. <sup>282</sup>
- Woodglen I LLC (owned 99.9% by Mr. Johnson and .1% by his wholly owned corporation Woodglen I Inc.) <sup>283</sup> purchased 99.9% of Reka from Barnville for \$103,838,510, payable on August 17, 2000 or earlier "unwind date." Payment of the purchase price was secured by a pledge of the Reka shares back to Barnville. Woodglen I LLC paid Barnville cash of \$3,466,248 as "prepaid interest." <sup>284</sup>

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you to draw up a very clear schedule which explains how the puts lose value as they get closer to expiry so that we don't just sit there like slugs waiting for some miracle which would have no logical basis to occur. I feel I was misled by you and you need to figure out a way of getting me out of this. Every day we get closer to expiry. I have never been afraid of risk when there is a logic for it, and an upside but there is none here, and we have no control."

Mr. Greenstein wrote back to suggest a telephone conversation to discuss the situation and try to put his mind at ease, and forwarded the exchange of messages on to Larry Scheinfeld and Chuck Wilk with the comment: "I believe we have a problem brewing. Obviously we need to make sure this doesn't happen again. One thing, Joel [Latman] and Woody get it!" (PSI-QUEL11598).

<sup>279</sup> 4/24/00 fax from Mr. Latman to Mr. Robbins (PSI-QUEL06938).

<sup>280</sup> 4/24/00 email from Mr. Robbins to Mr. Wilk (PSI-QUEL10863).

<sup>281</sup> 4/11/00 Memorandum of Association of Reka Limited (PSI-QUEL27162-63).

<sup>282</sup> 5/5/00 Contribution Agreement (PSI-QUEL01776-79).

<sup>283</sup> 8/11/00 notes of telephone call from Mr. Latman to Mr. Hirata (PSI-QUEL13182).

<sup>284</sup> 5/5/00 Purchase Agreement (PSI-QUEL07163-68); 11/30/00 Amended and Restated Purchase Agreement (PSI-QUEL07051-57); 11/30/00 Amended Agreement (PSI-QUEL12680-81).

- Woodglen I Inc. (a corporation wholly owned by Mr. Johnson)<sup>285</sup> purchased .1% of Reka from European American Corporate Services Limited (EAICS)(a Euram subsidiary) for \$103,942, payable on August 17, 2000 or earlier “unwind date.” Payment of the purchase price was secured by a pledge of the Reka shares back to EAICS. Woodglen I Inc. paid EAICS cash of \$3,470 as “prepaid interest.”<sup>286</sup>
- Barnville, Reka, and Jackstones entered into a “Novation Agreement”<sup>287</sup> to reflect the change in their positions under the Barnville/Jackstones stock lending agreement as a result of transfer of the “shares” to Reka. Since Reka had received Barnville’s right to return of the shares on loan to Jackstones, Jackstones agreed to deliver the stock on demand to Reka; Reka acknowledged its right to the shares was subject to Jackstones’ right to return of the “cash collateral” and assumed Barnville’s obligation to return the cash collateral, but only to the extent of the present value of the stock.<sup>288</sup>
- Barnville gave Reka its note for \$103,942,452 to cover the share of the cash collateral obligation to Jackstones assumed by Reka under the Novation Agreement.<sup>289</sup>
- Reka purchased a collar<sup>290</sup> from Barnville to protect it against a decline in value of the basket of stock. The

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<sup>285</sup> 8/11/00 notes of telephone call from Mr. Latman to Mr. Hirata (PSI-QUEL13182).

<sup>286</sup> 5/5/00 Purchase Agreement(PSI-QUEL07044-49); 11/30/00 Amended and Restated Purchase Agreement (PSI-QUEL07036-42); 11/30/00 Amended Agreement (PSI-QUEL12677-78).

<sup>287</sup> 5/5/00 Novation Agreement (PSI-QUEL07170-74).

<sup>288</sup> Barnville was still obligated to return cash collateral equal to the loss amount if Reka demanded delivery of the stock, because Reka did not assume that obligation.

<sup>289</sup> 5/5/00 Promissory Note (PSI-QUEL07137); Amended and Restated Promissory Note (PSI-QUEL07138-39).

<sup>290</sup> A collar is a securities option transaction, sometimes involving a combination of a purchase of a put option, to protect against a decline in value of stock held by the purchaser, and the sale of a call at a higher price to generate income used to pay for the put.

net cost of the collar was \$2,380,282 on May 5 and \$720,905 on May 22, 2000.<sup>291</sup>

- Reka issued a call warrant on the basket of stock to EA Investment Services Ltd., (EAISL) (a British Virgin Islands company controlled by Euram) for a premium of \$50,547,000.<sup>292</sup> The warrant contained a provision that, if the basket of stock was sold by Reka, EAISL reserved the right to “put” the warrant back to Reka at any time, in exchange for a return of the entire premium, plus all interest earned while it was invested. Reka agreed to let EAISL hold the premium in an interest bearing account.

At the end of the day on May 5, 2000, the parties had the following obligations to each other under the trade documents:

Jackstones owed Reka the shares of stock worth \$103,942,452;

Reka owed Jackstones cash collateral worth \$103,942,452;

Barnville owed Reka on a note for \$103,942,452,<sup>293</sup> and

Woodglen I LLC and Woodglen I Inc. together owed Barnville a total of \$103,942,452.

After the trade date, Reka was holding a right to delivery of the shares from Jackstones, and Jackstones held a right to payment of the purchase price. Whichever way the market moved, one side or the other would be in the position of losing money. That is, if the stock prices went up, Jackstones would have to acquire shares from the market at the higher price to deliver to Reka. Conversely, if the prices went down, Reka could expect to receive less valuable shares and have to pay the full purchase price to Jackstones.<sup>294</sup> As soon as the above arrangement

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<sup>291</sup> 5/5/00 Equity Option Transaction Confirmation (Put) (PSI-QUEL07059-63); 5/5/00 Equity Option Transaction Confirmation (Call) (PSI-QUEL07065-68).

<sup>292</sup> 5/5/00 Subscription Agreement (PSI-QUEL07141-47); 5/5/00 Warrant (PSI-QUEL07149-61).

<sup>293</sup> Reka also owed Jackstones the balance of the cash collateral equal to the loss amount of \$144,901,611 on the Reka shares removed from the original portfolio.

<sup>294</sup> Alternatively, the party on the losing side could make a net cash payment to the other, rather than going through the steps of Jackstones acquiring and delivering stock to Reka, which would then have to sell them.

was in place, each party hedged the risk that the stock would move in the wrong direction as to it. Reka did this by purchasing a “collar” from Barnville.<sup>295</sup> The collar was a combination of options on the stock in Reka’s basket that protected Reka against a decline in stock value, but also limited the amount of profit it could make if the prices went up. Reka paid Barnville \$3,101,187 for the net cost of the collar.<sup>296</sup> Jackstones did not directly hedge its risk that it might have to deliver more valuable stock to Reka, but Barnville purchased from Bank of America a financial product called a “call spread” that would give Barnville the benefit of any rise in the price of the basket to the same extent that Reka could benefit from an upward price movement as against Jackstones.<sup>297</sup> The cost of the call spread to Barnville was exactly covered by the “prepaid interest” that Mr. Johnson’s acquisition company, Woodglen I LLC, paid Barnville on the note for the purchase price of the 99.9 percent interest in Reka, plus the collar fees paid to Barnville through Reka.<sup>298</sup>

After the trade was executed and while the parties were following the market looking for an appropriate point to exit the transaction, Chuck Wilk began to express concern about the disproportionate ownership of the two “partners” in Reka. Mr. Wilk wrote John Staddon:

“What I do not like is that one purchaser owns 99.999999998% and the other purchaser who bought the nominee shares owns .0000000000002%. With identical rights and obligations the IRS is very likely to say we only have one member not two and therefore are not a partnership.

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<sup>295</sup> Normally, a collar combination of options is purchased through a broker from the market from a financial institution that has the financial strength to make good on the obligations. In this instance, the “counter party” on the collar transaction was Barnville.

<sup>296</sup> 3/13/02 email from Mr. Hanson to Amanda Nussbaum, a lawyer for Mr. Johnson (PSI-QUEL06807).

<sup>297</sup> Barnville’s call spread with Bank of America, set at 100 and 107 percent of the basket price (PSI-QUEL08644-46), was a mirror image of the collar that Reka had with Barnville, where the put was at 100 percent and the call was at 107 percent (PSI-QUEL06803). As a consequence, for every dollar that Jackstones would have to pay Reka if the price of the basket rose after 5/5/00, Barnville would receive a dollar from Bank of America under the call spread, up to 107 percent of the original basket price. If Jackstones had to pay Reka more than that, Reka would have to pass the excess along to Barnville under the collar. Conversely, if the basket price went down after 5/5/00, requiring Reka to take from Jackstones securities worth less than the original purchase price Reka was obligated to pay Barnville, Reka had a right under the “put” side of the collar to sell the securities to Barnville for the original purchase price.

<sup>298</sup> In a 4/28/00 email from Mr. Greenstein to Mr. Staddon on an identical trade being conducted for another Quellos client at about the same time as the Johnson trade, Mr. Greenstein explained: “Obviously the cost of the call spread will equal the combination of the pre-paid interest and the net debit on the options. This amount will be forward [sic] to Bank of America. A similar e-mail will be prepared for Woody’s trade.” (PSI-QUEL10705).

Game set and match IRS. However, if we can give the nominee shareholder some special rights (such as managing member, super-voting or economic preference) then we have an argument that there are two partners.”<sup>299</sup>

Mr. Staddon replied:

“When we first discussed the issue of the spvs having to be capable of partnership treatment, you only mentioned that there needed to be more than one owner of shares (which is what we have). The only way of introducing different rights at this stage is to amend the applicable articles of association by creating two different classes of shares. This action can only be instituted from this point onwards and then at the behest of the new owners. I am not sure whether that would be helpful given that at the time of original purchase the two sets of shares carried the same rights.”<sup>300</sup>

Mr. Wilk replied that he thought they would shift some ownership to the minority partner on the existing trades and perhaps employ different classes of stock for future trades.<sup>301</sup> However, it does not appear that any of this was done.

On June 5, 2000, Mr. Johnson, his representatives, and Quellos decided to “unwind” the POINT trade. This unwind entailed reselling the basket of stock to Jackstones, terminating the stock lending transaction as to the Reka basket, unwinding the collar between Reka and Barnville and the call spread between Barnville and Bank of America, cancelling the Reka warrant, and cancelling out the remaining obligations. These were largely accomplished in the following steps, all on June 5:

- Execution of an “Unwind and Purchase Agreement” in which Reka resold the basket of stock to Jackstones for \$112,276,243 – a nominal \$8,333,791 profit over the original sale price of \$103,942,452. Since Reka still owed the purchase price from the original trade, this unwind resulted in a net obligation of Jackstones to Reka of \$8,333,971.<sup>302</sup>

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<sup>299</sup> 5/15/00 email from Mr. Wilk to Mr. Staddon (PSI-QUEL09058-60, at 59).

<sup>300</sup> 5/15/00 email from Mr. Staddon to Mr. Wilk (PSI-QUEL09058-60, at 58).

<sup>301</sup> 5/15/00 email from Mr. Wilk to Mr. Staddon (PSI-QUEL09058-60, at 58).

<sup>302</sup> 6/5/00 Unwind and Purchase Agreement (PSI-QUEL07077-80).

- Execution of a “Termination Agreement” that unwound the Reka collar with Jackstones for a net payment due from Reka to Barnville of \$2,596,167.<sup>303</sup>
- A “Tripartite Set-Off Agreement” in which Jackstones’ \$8,333,791 debt to Reka was satisfied by (1) Jackstones’ agreeing to satisfy Reka’s \$2,596,167 debt to Barnville under the collar unwind, and (2) Barnville’s assumption of the remaining \$5,737,624 balance in exchange for Jackstones’ note for that amount. Thus at the end of this step, Barnville owed Reka \$5,737,624, and held Jackstones’ note for that amount.<sup>304</sup>
- Barnville unwound its call spread with Bank of America, receiving from the bank \$5,737,623.35.<sup>305</sup> This amount is credited to Reka through Treskelion Trust Company<sup>306</sup> in settlement of Reka’s obligation under the Tripartite Set-Off Agreement.
- EA Investment Services Limited exercised its “put” right under the Reka Warrant, returned the warrant to Reka, and kept the premium, which it had been holding for Reka, plus the interest it had purportedly been accruing to the benefit of Reka.<sup>307</sup>

At the conclusion of the unwind, the only obligations outstanding that involved any of the Johnson entities were the original purchase debt on the basket owed by Woodglen I LLC and Woodglen I Inc. to Barnville, in the total amount of \$103,942,452 and the \$103,942,452 note from Barnville to Reka under the “Novation” on May 5, 2000.<sup>308</sup> The Subcommittee has not located any documents evidencing the offsetting

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<sup>303</sup> 6/5/00 Termination Agreement (PSI-QUEL07119-20).

<sup>304</sup> 6/5/00 Tripartite Set-Off Agreement (PSI-QUEL07070-71).

<sup>305</sup> 6/5/00 Bank of America N.A. Notice of Full Trade Unwind (PSI-QUEL08653).

<sup>306</sup> 6/8/00 Bank of America Securities Wire Request (BA PSIQ00077); June 2000 Extract from Triskelion Trust Company Statement for Barnville Limited (PSI-QUEL06916).

<sup>307</sup> 6/6/00 EA Investment Services Limited letter to Reka Limited (PSI-QUEL07122); 6/30/00 EA Investment Services Limited Statement of Account (PSI-QUEL07181).

<sup>308</sup> None of the evidence available to the Subcommittee indicates what, if anything, happened to the \$5,737,624 note Barnville held from Jackstones under the Tripartite Set-Off Agreement.

of these two obligations, but email communications between Euram and Quellos indicate that this was planned. On March 24, 2000, John Staddon wrote Chuck Wilk at Quellos that leaving the debt under the stock lending agreement payable by the Isle of Man entity (Barnville) to the Cayman entity (Reka) “works out quite nicely when it comes to payment of the deferred consideration by Delaware LP [the Woodglens] in that we can effectively set-off the two amounts (given that Cayman co is a sub of Delaware LP at such time, this should be relatively straightforward – in fact, I will refelet [sic] it in the sale and purchase agreement when it comes to the payment of the defired [sic] price.”<sup>309</sup> In fact, the right to set off the Woodglens’ purchase debt against any obligations Barnville might owe to the Woodglens or their affiliates or subsidiaries is included in the two Woodglen agreements for the purchase of Reka.<sup>310</sup> Whether or not a document was prepared to effect a set-off of these two debts, it is clear that they cancelled each other out, so that neither the Woodglens and their Subsidiary Reka nor Barnville had a net obligation to the other.

After the trade was unwound, Quellos and Euram turned their attention to preparing the documents to reflect what had purportedly taken place on May 5 and June 5, 2002. On June 7, Brian Hanson wrote John Staddon at Euram on another client’s trade: “Now that the unwind documents are fairly settled, we really need to push on getting all the documentation for each trade finished, signed, and filed. Particularly, we need to focus on [client name redacted by Subcommittee] this week. If you could send me final copies of all his docs (opening and closing) signed by the Isle of Man folks, then I will ensure that they are sent to [client] and signed. . . . We should then focus on Woody and [client name redacted by Subcommittee] early next week.”<sup>311</sup> Work actually began on the Johnson documents after June 17: “I have spoken with the client contact for the investors in Reka and Burgundy and have bought us some time. The expectation on their part is that we will have draft documents for the purchase of Reka and Burgundy by Monday. We are still reviewing the documents for Reka.”<sup>312</sup> In fact, the drafting process lasted the remainder of the year, with the final “document wrapup” occurring in January 2001.<sup>313</sup>

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<sup>309</sup> 3/24/00 email from Mr. Staddon to Mr. Wilk (PSI-QUEL10844).

<sup>310</sup> Woodglen I LLC Purchase Agreement, section 5.2 (PSI-QUEL07163-68, at 64); Woodglen I Inc. Purchase Agreement, section 5.2 (PSI-QUEL07044-49, at 45).

<sup>311</sup> 6/7/00 email from Mr. Hanson to Mr. Staddon (PSI-QUEL10075).

<sup>312</sup> 6/15/00 email from Mr. Hanson to Rajan Puri at Euram (PSI-QUEL09558).

<sup>313</sup> 1/9/01 record of meeting between Mr. Hanson and Mr. Latman (PSI-QUEL10149); 1/9/01 record of meeting between Mr. Hanson and Mr. Puri (PSI-QUEL10151). Apart from the



In an interview with Subcommittee staff, Chuck Wilk of Quellos insisted that preparing documents after the fact to confirm securities transactions was normal practice throughout the industry, citing the preparation of trade confirmations after market trades, dated “as of” the trade date, as an example.<sup>314</sup> However, the Quellos and Euram emails establish that the parties were doing more than confirming precise dollar and share amounts that could not have been known before the moment of trade, as occurs with normal securities trades. Nor were the documents in question dated “as of” May 5 and June 5, 2000. The Quellos and Euram emails establish that, months after the trades took place, the purported terms of the transactions were changing in significant ways during the drafting and editing process.<sup>315</sup> As to the dates on the documents, nothing on the face of any of the documents suggested to a reader that they were prepared after the dates they bore.

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documentation of the trades themselves, Quellos was making changes to the accounting journal entries on the entities’ books as much as 16 months after the events. See 9/14/01 record of meeting between Andy Robbins, Mr. Hanson and Mr. Latman (PSI-QUEL10223).

<sup>314</sup> Subcommittee interview of Mr. Wilk (6/28/06).

<sup>315</sup> See, e.g., 6/26/00 email from Mr. Staddon to Mr. Hanson and reply (PSI-QUEL10367-69, at 68)(discussing what the split between Woodglen I LLC and Woodglen I Inc. should be (99-1 or 99.9-.01)); 7/13/00 email from Mr. Puri to Mr. Hirata (PSI-QUEL11242)(“I’m happy with your changes to:  
 - Global Call Warrant document  
 - Subscription Agreement  
 - Purchase Agreement (B’ville - Woodglen LLC)  
 - Put option  
 - Termination Agreement  
 - Tripartite set-off”);  
 7/14/00 email from Mr. Puri to Paul Moore, Director of Barnville (PSI-QUEL09562-63)(“... d) Termination Agreement - As part of the Unwind of the Tranch2, a Termination Agreement was signed by the following - Woodglen Inc, Woodglen LLC, Barnville Ltd, Reka Limited and Euram Corporate Services Ltd, to allow various netting arrangements. This unwind process has now been scaled back (due to personal tax considerations of the end-client) so that the termination agreement should simply refer to the unwind of the call and put options executed between Barnville and Reka. Therefore, rather than cross-out a number of the signatures on the original 5-way Agreement, can you simply re-execute on behalf of Barnville, the following signature page please . . .”); 9/29/00 email from Mr. Staddon to Mr. Hirata (PSI-QUEL09541-52)(“Attached is a form of Unwind Agreement by which I think we can document the close out of the novated stock loans and associated repayment of the cash collateral (or as is most likely part repayment) by Barnville to Jackstones. As you will see, I have completely eliminated any residual cash collateral obligation under the Stock Loan Agreements by having Barnville execute promissory notes in favour of Jackstones. . . . I also attach a revised form of Novation Agreement which provides a bit more specifics on the treatment of the cash collateral obligation. The new clause 3 is I think necessary in order to explain why LLC would be prepared to allow Barnville to retain the original cash collateral pot albeit subject to keeping the obligation to return it upon the due redelivery of the Borrowed Securities.”); 10/26/00 email from Mr. Scheinfeld to Mr. Latman (PSI-QUEL20464)(“I spoke to Chuck yesterday. We are in agreement that the best plan is the one we discussed with the contribution and subsequent loanback. He tried to call you yesterday to finalize. Hopefully, you can talk today and then you can run it past Ira for his input. I believe this is the best solution. . . .”).

The way Mr. Johnson's transaction was structured, the "gain stock" that was to be shielded from tax by the Reka loss was not placed inside of Reka where the loss was being generated, so it was not possible to mix the loss stock with the gain stock to cancel out the taxable gain, as originally planned for the POINT transactions. Instead, when the loss stock was sold, another feature of partnership tax law was going to be used to get the loss out to where Mr. Johnson's gain stock was. Under U.S. tax law, a partnership loss is passed out to the partners, who are allowed to claim their shares of the loss on their own tax returns, but only to the extent of their investment, or "tax basis" in their partnership interests.<sup>316</sup> If their partnership basis is less than the loss realized by the partnership, some of the loss can go unused. After the Reka trade was complete, Mr. Johnson and his advisors decided that Mr. Johnson could use additional partnership basis in Reka. Chuck Wilk told Subcommittee staff that he recalled Mr. Johnson's lawyer Ira Akselrad saying "we want more basis in the entity than we currently have." Mr. Wilk assumed that the reason for wanting more basis was "to get more tax attributes [losses] out."<sup>317</sup>

Over the period June through September 2000, there was considerable discussion within Quellos about how to document the additional basis and what date to use for the transaction. The date was critical, because of the reason being used to justify the need for an additional contribution of capital that would provide the additional tax basis. On June 27, 2000, Mr. Staddon asked Quellos for an email explaining the "rationalization/argumentation for the additional note."<sup>318</sup> Mr. Wilk wrote Brian Hanson: "we went over this before. The additional borrowing is to secure the warrant indenture which states that at any time if the warrant is not 'covered' the partnership must have a multiple of the shortfall in other collateral. The borrowings injected into the partnership by the investor is to secure that 'uncovered' position."<sup>319</sup> The problem with this explanation is that the warrant had already been unwound, or cancelled, on June 5, 2000, seven weeks before this discussion took place. For this explanation to look reasonable, it would be necessary to backdate all documents pertaining to the injection of additional capital to a date prior to the warrant's unwind. Rajan Puri at

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<sup>316</sup> This "partnership basis" must be distinguished from the basis the partnership has in its own assets. The partnership's basis in its own assets is what determines the amount of loss when it sells the assets, while the partner's "basis" in his partnership interest determines how much of the partnership's loss he can personally use.

<sup>317</sup> Subcommittee interview of Mr. Wilk (6/28/06).

<sup>318</sup> 6/27/00 email from Mr. Hansen to Mr. Wilk (PSI-QUEL39692).

<sup>319</sup> 6/27/00 email from Mr. Wilk to Mr. Hansen (PSI-QUEL39692).

Euram sent Chris Hirata at Quellos draft notes for the “additional basis creation” on July 13, 2000,<sup>320</sup> and Chris Hirata apparently contacted John Staddon at Euram to discuss the possibility that the investor would contribute cash to support the additional basis. Mr. Staddon responded:

“I got your message about how you think the additional capital injection into Reka is to be structured. The trouble is that I do not see how this can work. I had assumed that we would be having a circular funding pattern between the Woodglen entities, Reka and Barnville – such that no cash would need to actually pass i.e. purely book entry. If I have understood you correctly, you are in fact looking for the Reka capital to be invested in Euram fixed income instruments, the proceeds for which presumably could then be invested by Euram in Barnville paper. Unlike the pure book entry affair that I had originally understood, this would involve actual funding, balance sheet utilisation and a regulatory capital cost, something [sic] which we can not accommodate in the amounts required for these structures.”<sup>321</sup>

All further discussions of the subject involved documenting the additional capital contribution by book entry, or offsetting obligations. On August 1, 2000, Mr. Puri emailed Chris Hirata: “CHRIS – question for you re the docs for increasing the basis in Reka/Burgundy [a related transaction] . . . what do you want to use as the effective date (bear in mind that if we need to back-date it significantly . . . ie to BEFORE the date of the unwind . . . we may have a problem with the Cayman guys).”<sup>322</sup> Later the same day, Mr. Puri sent draft promissory notes pertaining to the additional basis transaction, with the comment: “we are awaiting confirmation from the Caymans guys as to: . . . the dating options we have (since I presume the flows will simply be book entry, Cayman are likely to be uncomfortable with back-dating entries . . . does this cause you a problem?)”<sup>323</sup>

The Cayman administrators of Reka did have a problem with backdating the documents when the subject was discussed with them. In an August 15, 2000, email dealing primarily with an issue involving the dating of a corporate resolution pertaining to a directorship of Woodglen

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<sup>320</sup> 7/13/00 email from Mr. Puri to Chris Hirata (PSI-QUEL10534).

<sup>321</sup> 7/17/00 email from Mr. Staddon to Chris Hirata (PSI-QUEL09556).

<sup>322</sup> 8/1/00 email from Mr. Puri to Mr. Hanson and Chris Hirata (PSI-QUEL10511).

<sup>323</sup> 8/1/00 email from Mr. Puri to Chris Hirata and Mr. Hanson (PSI-QUEL10394).

I Inc., Mr. Puri related the following to Chris Hirata and Brian Hanson of Quellos:

“i) Citco [formerly Curacao International Trust Company](as a director of Reka Ltd) will NOT be party to an attempt to back-date the appointment of Woodglen – this has come directly from Nick Braham (Citco Global Internal Counsel).

“ii) The appointment of Woodglen as a co-director can be made via ordinary resolution by the current shareholders (ie Woodglen Inc, LLC) and ratified by the Board of directors (ie Citco), but such ratification can only happen real time (ie now) . . . which is no good to you.

“iii) It seems the only compromise Citco would be willing to make on this would be a resolution that alluded to the intention of appointing Woodglen as a director in early May, which did not happen due to an administrative oversight . . . however, this note and the associated appointment could only be signed as effective now; therefore, Roy’s view is that such a resolution would be self-defeating if it was ever subject to review.

“iv) Unfortunately, Citco’s stance also has ramifications for the attempt to increase the basis via the capital injection by Woodglen into Reka . . . . Citco will not permit the execution of back-dated documents, particularly where the documents have such a material impact on the economics of the structure.

“Finally, Roy mentioned to me that he was surprised that (as disclosed to him during your conversations with him) the ‘other SPV providers in the IoM would be willing parties to such a back-dating exercise’. . . didn’t push him on this, and do not know whether he was told the identity of the IoM guys, but I’m sure that you do not need reminding how sensitive this whole exercise is and therefore the need for complete discretion.”<sup>324</sup>

The corporate resolution on the Woodglen directorship was not ultimately backdated,<sup>325</sup> but virtually all other documents pertaining to

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<sup>324</sup> 8/15/00 email from Mr. Puri to Chris Hirata and Mr. Hanson (PSI-QUEL13288).

<sup>325</sup> The Caymanian directors of Reka added Woodglen I Inc. as a Reka director on August 29, 2000 (PSI-QUEL07116).

the Johnson trade were, including all of the documents pertaining to the additional capital contribution. The contribution was to be effectuated by:

- \$40,000,000 contributions of capital to Reka by Pledges of Woodglen I LLC (\$39,960,000) and Woodglen I Inc. (\$40,000);<sup>326</sup>
- \$40,000,000 35-year loans from Barnville to Woodglen I LLC and Woodglen I Inc., to finance the “cash” contributions to Reka’s capital;<sup>327</sup> and
- a \$40,000,000 purchase of a Barnville 35-year debenture<sup>328</sup> by Reka;<sup>329</sup>

All of the relevant documents were dated May 5, 2000.

As a result of these three sets of documents, the two Woodglens purportedly owed Barnville \$40,000,000 on the notes, Barnville owed Reka \$40,000,000 on the 35-year debenture, and Reka’s books showed a \$40,000,000 capital charge in favor of Woodglens. None of the documents reviewed by the Subcommittee contain any indication that any cash changed hands in these transactions or that they amount to anything other than the “pure book entry affair” involving a “circular funding pattern” described in Mr. Staddon’s email on July 27, 2000. In addition, the email records establish that all of these documents, which were dated May 5, 2000, were still being passed around for signature as late as September 2000.<sup>330</sup>

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<sup>326</sup> Woodglen I LLC Cash Contribution Pledge dated May 5, 2000 (PSI-QUEL07132); Woodglen I Inc. Cash Contribution Pledge dated May 5, 2000 (PSI-QUEL07133); Reka Limited Directors’ Resolution recording the \$40,000,000 as a contribution to its share premium account (PSI-QUEL07123).

<sup>327</sup> \$39,960,000 Promissory Note from Woodglen I LLC to Barnville dated May 5, 2000 (PSI-QUEL07134); \$40,000 Promissory Note from Woodglen I Inc. to Barnville dated May 5, 2000 (PSI-QUEL07135).

<sup>328</sup> A debenture is an unsecured bond, or long-term debt instrument.

<sup>329</sup> Debenture dated May 5, 2000 (PSI-QUEL07125-30).

<sup>330</sup> See, e.g., 9/21/00 email from Siobhan Gillespie at Citco to Mr. Hanson at Quellos (“To enable us to get the debenture signed off would you please provide us with signed copies of the documents, copies of which were emailed to Roy on September 1<sup>st</sup> (the file notes should at least be initialed)”) and email from Mr. Hanson forwarding the Gillespie email to Mr. Hirata (“OK - so they’re looking for signed copies of the promissory notes and initialed copies of the file notes before they will sign the debenture. First, do you think this is really necessary and second, have we even gotten Joel [Latman] to a point where he is comfortable enough with the issue to be willing to sign them?”) (PSI-QUEL09624-26, at 24); 9/27/00 email from Mr. Hirata

Just as the POINT trade itself was unwound on June 5, 2000, the circular flow of liabilities supporting the additional capital contribution was unwound in a three-way “Termination Agreement” among Reka, Barnville, and the two Woodglen entities dated November 30, 2000.<sup>331</sup> This agreement provided that Reka wished to make a “distribution in specie” (a return of capital) to the two Woodglen entities by assigning to them the Barnville Debenture. As a consequence of this part of the agreement, the Woodglens held a 35-year \$40,000,000 debenture from Barnville, and Barnville held 35-year notes from the Woodglens totalling \$40,000,000. The termination agreement provided that each would redeem its obligation to the other in a complete setoff of the liabilities. As a result of this agreement, the parties were in the same position they were before the May 5, 2000, documents were signed in late September, and no real capital was invested in Reka. The Subcommittee has found no email or other document that directly explains why this part of the transaction was unwound. However, one email from Mr. Wilk to Mr. Staddon on October 12 suggests that one of Mr. Johnson’s lawyers was concerned that the three-way lending transaction was subject to challenge because the liabilities were completely offsetting:

“In regards to the triangular loans (i.e. loan from Barnville to Woodglen/ contribution by Woodglen to Rekka/purchase by Rekka of debt security from Barnville) is it possible for Rekka to purchase debt security from Euram (or an affiliate)? Ira Axelrod [sic][Mr. Johnson’s lawyer] does not like the circular nature of the structure (and I don’t blame him) and wants a proposal that Cravath accepts that will make him more comfortable with the basis and at risk rules (IRC 465).”<sup>332</sup>

Mr. Johnson’s advisors apparently decided not to use this transaction to claim additional partnership basis, because the net effect of unwinding the three-way transaction was to reduce Mr. Johnson’s basis back to where it started before the notes and debenture were signed. In addition, it appears that Mr. Johnson made a \$20 million cash

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to Mr. Hanson (“Please bring copies of the Promissory Note/Note to File/Debenture for RJWTV [sic] and [redacted by Subcommittee] to Chuck ASAP. Thx.”) and reply (“They’re printing as we speak”)(PSI-QUEL27291).

<sup>331</sup> Termination Agreement dated November 30, 2000 (PSI-QUEL07093-97).

<sup>332</sup> 10/12/00 email from Mr. Wilk to Mr. Staddon (PSI-QUEL25006-07, at 06).

contribution to capital before the end of the year,<sup>333</sup> which would support an addition to basis in that amount.

In the final analysis, even though the market price of the stocks supposedly in the basket went up, the fees and costs of the POINT transaction far exceeded the amount Mr. Johnson “made” in the month he held the “stocks.” According to a calculation of profit and loss prepared by Quellos, the gross profit of \$8,333,791 that he purportedly made when the basket of stock was sold back to Jackstones was reduced by the costs of the collar to a “trading gain” of \$2,636,436, which was further reduced by the prepaid interest (representing Barnville’s cost of the call spread at Bank of America<sup>334</sup>) and Quellos’ fee of \$2.9 million to a net loss of \$3,733,282.<sup>335</sup> In a “synopsis of the trade profitability” sent to one of Mr. Johnson’s lawyers, Quellos nevertheless concluded that the trade was arguably profitable:

“The portfolio was liquidated for \$112,276,243 generating a profit of \$8,333,791. The investment advisory fees associated with Quellos were paid separately by RWJIV pursuant to an investment advisory agreement spanning a 24 month period that requires the payment of \$120,000 per month. There was an additional \$20,000 that was paid by Reka. Using these figures one could argue that Reka generated a net profit of \$2,636,437 over the 31 day period not accounting for the fees of \$1,450,000 and the \$2,900,000.”<sup>336</sup>

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<sup>333</sup> Woodglen I LLC and Woodglen I Inc. Journal Entries as of 12/31/00 (PSI-QUEL12583-84).

<sup>334</sup> The only part of the entire Johnson POINT transaction having any economic reality was the one part involving a third party outside the closed system of the taxpayer, the promoters, and the entities they controlled – the call spread option package purchased by Barnville from Bank of America. Every other obligation or payment was cancelled out by some other obligation or payment (except for the promoters’ fees), and the profit on the Bank of America call spread was the source of the additional funds Jackstones “owed” Reka when the benchmark stock prices went up. If the prices had gone down, on the other hand, Barnville would have lost the fees it paid for the call spread, all of which came from the prepaid interest and collar fees paid by Mr. Johnson and his entities, but Jackstones would have owed no money to Reka, and Reka would have been protected against loss by the “collar.” In other words, Mr. Johnson stood to “make” money only to the extent the call spread made money, and stood to lose only the cost of the call spread (paid through his fees to Barnville). The net effect of the entire POINT transaction, apart from the tax loss, was the same as if Mr. Johnson had directly purchased a call spread from the bank. The fees he paid to Quellos and Euram (plus the fees he paid to his own tax advisors) were therefore wholly attributable to the tax loss he was purchasing.

<sup>335</sup> Robert W. Johnson IV – Reka Limited Summary as of June 5, 2000 (PSI-QUEL00339).

<sup>336</sup> 3/13/02 email from Mr. Hanson to Ms. Nussbaum (PSI-QUEL06807).

Quellos fee of \$2,900,000 was 2 percent of the target tax loss of \$145,000,000,<sup>337</sup> and Euram's fee of \$1,450,000 was one percent of the loss.<sup>338</sup>

On August 29, 2000, almost three months after Mr. Johnson's POINT transaction was unwound, Cravath, Swaine & Moore issued a legal opinion on the tax consequences of the transaction.<sup>339</sup> The opinion begins with a five-page summary of the facts on which it was based. Although it is dated after the transaction, the opinion names none of the entities involved in the transaction, and it describes the transaction in prospective terms, beginning "Investor proposes to purchase a 99.9 percent membership interest in a non-U.S. limited liability company ('SPV')...." It describes the formation of the SPV (Reka), the contribution of the "stocks" by the offshore "fund" (Barnville), and the issuance of the covered warrants in the past tense, although these events occurred simultaneously with the purchase of Reka on May 5, 2000. The only purpose it ascribes to the formation of Reka was to issue the warrants, which it describes in detail. It describes the anticipated financing of the purchase by the "fund" and the acquisition of a collar. The summary does not discuss the anticipated length of time the stocks will be held by the SPV, but states that they may be sold after consultation with the investment advisor. There is no mention of a possible tax purpose for the transaction until the final paragraph of the summary, which states that the investor anticipates "substantial" pre-tax return on its investment (based on the investment of the warrant premium and the potential increase in the stock value) "in relation to the potential U.S. Federal income tax benefits attributable to the built-in loss in the stocks held by SPV."<sup>340</sup> There is no indication anywhere in the opinion of the amount of anticipated tax benefit or the amount of anticipated profit the factual summary is comparing.

The remainder of the 23-page opinion consists of a legal analysis based on the stated facts. The bulk of the legal analysis pertains to legal principles called the "economic substance" and "business purpose"

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<sup>337</sup> 10/25/01 email from Mr. Hanson to Mr. Robbins (PSI-QUEL25004); Quellos fee was calculated as a percentage of the loss, but it was paid in \$120,800 monthly installments over two years. 7/1/00 Relationship Agreement (PSI-QUEL27257-62).

<sup>338</sup> 6/29/00 email from Mr. Puri to Mr. Hanson ("As I mentioned to you several days back, the Euram 1% fees appear to have been calculated based on the losses the clients were aiming to generate (totalling USD4.45 [million]) . . . I think therefore that Euram are due another USD33k – does this make sense to you?")(PSI-QUEL27141-42, at 41).

<sup>339</sup> 8/29/00 Memorandum for R.W. Johnson, IV, and attached opinion letter (PSI-RWJ000241-64).

<sup>340</sup> *Id.*, at 1-5.



doctrines, and the opinion concludes that the investor will “more likely than not” be able to claim the tax loss built in to the “shares” acquired from Barnville. This conclusion is based completely on the assumed fact that the investor is expected to realize a significant pre-tax profit.<sup>341</sup> The opinion also analyzes the transaction in reference to several other technical tax rules and concludes that it passes muster, again on the basis of the assumed facts.

As described above, the evidence examined by the Subcommittee indicates that some of the assumed facts in the opinion are incorrect (such as the existence of shares of stock purportedly held by Reka), some are inaccurate or incomplete (such as the sequence of the contribution of the shares, the issuance of the warrant, and the purchase of Reka), and some important facts are omitted (such as the fact that no economic benefit can be realized from the premium if the warrant is cancelled). When these matters were reviewed with Lewis Steinberg of Cravath, he stated that he relied completely on Quellos and the taxpayer’s other advisors to assure that the factual statement was accurate and indicated that, after a draft opinion was circulated, neither Quellos nor Mr. Johnson’s advisors expressed any problem with the facts as described.<sup>342</sup> He further explained that his job as a tax practitioner was to include a full description of all known facts that appear relevant to the anticipated opinion, and that it is a given of tax practice that such an opinion may only be relied upon to the extent that it reflects the facts as known to the client. In his expressed view, it is not incumbent on a tax practitioner who has been asked to give an opinion on a set of facts to investigate the correctness of those facts in the absence of an apparent inconsistency with what he knows to be true.

Particularly with regard to the nature of the assets to be contributed to Reka by Barnville, Mr. Steinberg stated that his understanding was as stated in the opinion: that Reka owned real shares of stock that it had acquired in the ordinary course of its business as an investment fund, and that the source of those facts was Quellos.<sup>343</sup>

Quellos registered the Johnson POINT transaction as a tax shelter on November 14, 2000, by filing Form 8264, application for Registration of a Tax Shelter.<sup>344</sup>

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<sup>341</sup> *Id.*, at 9.

<sup>342</sup> Subcommittee interview of Mr. Steinberg (7/26/06).

<sup>343</sup> *Id.*

<sup>344</sup> 11/14/00 Form 8264, Application for Registration of a Tax Shelter (PSI-RWJ00146-47).

Mr. Johnson told Subcommittee staff that he was not able to use all of the loss generated through the POINT transaction on his 2000 tax return. In addition, he stated that, in 2002, when the IRS made a public offer to taxpayers in potentially abusive tax shelters that it would waive penalties if they disclosed their involvement and paid all tax and interest,<sup>345</sup> Mr. Johnson made such a disclosure, which led to an IRS audit. When the IRS challenged the losses claimed in conjunction with the POINT transaction, he agreed to the adjustments proposed.<sup>346</sup> Mr. Johnson has not yet paid the additional tax and interest, because the IRS has not yet sent him a final computation. However, his estimate of the additional tax due on the disclosure form, after taking into account some operating losses from other years, was approximately \$17,000,000.

### **The Disappearing Losses**

In May 2000, while Quellos was in the midst of the Johnson/Reka transaction, the market for technology stocks enjoyed a period of recovery, which meant that the losses built into the Barnville-Jackstones paper portfolio were diminishing. Mr. Scheinfeld sent an email to Mr. Greenstein and several other Quellos principals on May 15, listing the transactions in process and observing: “Looks like we have no more room on the POINT trade. We should be very careful about selling any more.”<sup>347</sup> Mr. Greenstein replied “Big trade pending w/ [client name redacted by Subcommittee] At this point I think we need to notify people that it is truly first come first served. Since the losses are dependent on market moves, who knows how many we will have at any point in time.”<sup>348</sup> Mr. Greenstein added later in the day:

“[J]ust to give you a perspective on timing – this morning we had approximately 1.4 bln in usable losses, on the close we had about 1.15 billion. If the market moves to where [client name redacted by Subcommittee] is break-even it will probably be down to about 700 mln. We will try to add more positions to generate losses but they are a function of market moves. As bad as it sounds, the ‘snooze you lose’ comment may unfold for those who can’t make decisions in a timely manner. Without being to aggressive, we should make

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<sup>345</sup> IRS Announcement 2002-2, 2002-1 CB 304.

<sup>346</sup> Subcommittee interview of Mr. Johnson (7/20/06).

<sup>347</sup> 5/15/00 email from Mr. Scheinfeld to Mr. Greenstein, et al. (PSI-QUEL12073).

<sup>348</sup> 5/15/00, 7:48 a.m., email from Mr. Greenstein to Mr. Scheinfeld, Mr. Wilk, and Mr. Robbins (PSI-QUEL12073).

people who are considering this trade aware of the timing ramifications.”<sup>349</sup>

The following day, Mr. Greenstein updated the others on the status of the paper portfolio: “under \$900 in losses as of now.”<sup>350</sup>

### **Evolution of POINT to a Financed Deal**

After the first three trades, there was a question whether Cravath would write additional tax opinions, and Quellos was looking for another firm to write opinions for additional trades. On August 21, 2000, Mr. Scheinfeld wrote Mr. Wilk: “Will we be able to do any more transactions this year?? I want to get back to two clients who are pretty far down the road. I would think 9/15 would be a drop dead date. Do you anticipate hearing back from any reputable firms? I want to be honest with these prospects.”<sup>351</sup> Mr. Wilk responded:

“As of now, I would guess no losses for 2000 but that we could start a trade that had 2001 losses. Akin Gump has written this opinion for a corporate client but they definitely [sic] require more time between events than we did on the first three trades. Jim Barry is back from vacation this week and I will speak with him on opining. Bryan Cave is a remote possibility (given their fee structure). I believe Sherman [sic] and Sterling opined for the Lehman trade and I will try to get a contact name. Jeff and I spoke and decided that in future trades we will try to have bank borrowing and actual cash purchases. All that said if we can get a firm commitment [sic] to opine and we started early in September and we had favorable market volatility) we may be able to generate 2000 loss.”<sup>352</sup>

Mr. Scheinfeld asked in response to the above message from Mr. Wilk: “would it be of any help to you if I called Bryan Cave?”<sup>353</sup> and Mr. Wilk replied: “I would like to keep you on the sidelines or in our back pocket until we need a trump card (lots of cliches). It may be that given

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<sup>349</sup> 5/15/00, 1:24 p.m., email from Mr. Greenstein to Mr. Scheinfeld, Mr. Wilk, and Mr. Robbins (PSI-QUEL12073).

<sup>350</sup> 5/16/00 email from Mr. Greenstein to Mr. Scheinfeld, Mr. Wilk, and Mr. Robbins (PSI-QUEL12073).

<sup>351</sup> 8/21/00 email from Mr. Scheinfeld to Mr. Wilk (PSI-QUEL22487).

<sup>352</sup> 8/21/00 email from Mr. Wilk to Mr. Scheinfeld (PSI-QUEL22487).

<sup>353</sup> 8/21/00 email from Mr. Scheinfeld to Mr. Wilk (PSI-QUEL22486).

the current atmosphere we need to pay the law firms more and give them a guarantee.”<sup>354</sup>

However the transaction was financed, the risk and reward to the client were the same – the collar around the “basket” ensured that no money would be lost, whether the “rights” to stock were bought and sold within the structure, as in the Johnson trade, or whether borrowed cash was used to buy real stock from the market to sell back to the market. By the same token, the collar limited the amount of possible profit to the point where it was virtually impossible for the stock “profit” to exceed the total fees and transaction costs to the client, regardless of whether the deal was funded with cash or with mutual obligations of the parties, as with the Johnson trade. The primary reason for wanting to use cash, thus, seems to be the improvement to the “optics” or appearances of the transaction that would come with the use of cash and the involvement of third parties in aspects of the deal.

The next POINT trade done by Quellos, for another New York investor, did involve actual cash for the purchase of the Trading Partnership, named Platinum Trading Partners,<sup>355</sup> and the cash was borrowed from a bank. The injection of cash required modifications to other aspects of the trade, and actually eliminated the need for some of the documents used to “unwind” the internal obligations created in the earlier transactions to make up for the lack of cash.<sup>356</sup>

### **Titanium Transaction (Haim and Cheryl Saban)**

Haim Saban is a producer of children’s television programming, and is best known for introducing the Mighty Morphin Power Rangers to children’s TV. According to Mr. Saban, he started in the children’s

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<sup>354</sup> 8/21/00 email from Mr. Wilk to Mr. Scheinfeld (PSI-QUEL22486).

<sup>355</sup> At this point, Quellos was selecting the entity names from a list of metals and crayon colors. See 9/27/00 email from Mr. Hirata to the Quellos Conversion Trade Group: “Don’t know if I like this theme. Here are some more ideas though (some approved off the original list, some new). How about metals? (i.e. Steel, Titanium, Platinum, etc.) – Sienna, Coral, Cyan, Silver, Cerulean, Chestnut, Mahogany, Shadow, Orchid, Cobalt” (PSI-QUEL20423) and reply from Mr. Hanson: “I was working with a limited list of colors (not the whole box of 64) – I like the additions. Metals sound cool.” (PSI-QUEL20423-24, at 23).

<sup>356</sup> 9/26/00 email from Mr. Hanson to Mr. Puri (PSI-QUEL09441-42, at 41)(“**Stock Lending Unwind Agreement (new)** . . . This document should be drafted to reflect the fact that the investor, via the Delaware LP, is calling the portfolio of stocks from Jackstones pursuant to their rights under the Lending Agreement. I think that, if worded properly, this document could replace the Tripartite Set-Off Agreement and Unwind and Purchase Agreement. Since payment is made in full on day one and this document shows all shares being transferred to the LP on day one, the Tripartite Agreement seems unnecessary. The Unwind document is no longer valid since the purchase is fully funded up front. Let’s just make sure that the LP is clearly not liable to repay any of the collateral obligation that Jackstones has to Barnville”)(emphasis in original).

entertainment business selling music for cartoons and expanded that business into the production of cartoons, and then into the international distribution of cartoons. He purchased the rights to the Power Rangers during a trip to Japan in the 1980s and spent a number of years trying to sell the idea to distributors in the United States. When he finally succeeded in convincing a Fox executive to give him a contract, the show was an immediate hit with children. Out of the Power Ranger success, Mr. Saban formed a partnership with Rupert Murdoch that outbid Disney on the acquisition of the Family Channel, and turned that network into Fox Family Worldwide, Inc. (FFWW), of which Mr. Saban and his interests owned approximately 50 percent.<sup>357</sup>

Mr. Saban told the Subcommittee that, in late 2000 or early 2001, he had decided that he would be selling his interest in FFWW in the near future, probably to Disney, at a profit approximating \$1.5 billion, and asked his long time advisor, tax lawyer Matthew Krane, to start thinking about tax planning and estate planning with respect to the money he expected to be receiving from the sale. According to Mr. Saban, for a number of months, Mr. Krane said he had no ideas but, at some point in 2001, he brought Mr. Wilk from Quellos to a meeting with Mr. Saban to present a tax planning idea. Mr. Saban remembers Mr. Krane trying to explain a complicated transaction using a sheet of paper with “a lot of triangles and arrows.” Mr. Saban said that he told Mr. Krane that he should know Mr. Saban would never understand such a transaction. Instead of listening to a complicated explanation, Mr. Saban said he had two questions for Mr. Krane and Mr. Wilk: (a) is the transaction kosher, and (b) will a reputable law firm issue an opinion in writing that it is kosher? According to Mr. Saban, they said “Yes, to both.”<sup>358</sup>

Mr. Saban told the Subcommittee that his objective in talking to Mr. Krane and Mr. Wilk was not to to make money on the stock market but to save money on taxes, and the plan that they presented to him was a tax planning strategy, not an investment strategy. Mr. Saban told the Subcommittee that the benefit of the plan was supposed to be “full tax deferral of the Disney sale, ad infinitum.” There was a discussion of profit potential on a stock portfolio that was mentioned later, but Mr. Saban told the Subcommittee that his understanding was that the reason for the investment aspect of the plan was that there had to be a business reason for the plan or it “wouldn’t hold water.” He said that there was supposed to be an economic profit that would be earned on an investment but that the plan involved the purchase of a “collar” that

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<sup>357</sup> Subcommittee interview of Mr. Saban (7/19/06).

<sup>358</sup> Id.

would limit the downside risk and would also limit the upside. He told the Subcommittee that he had not been concerned with the details of the transaction because it had the “Matt Krane stamp on it,” as well as the approval of a major law firm. However, he told the Subcommittee that he clearly understood that this was a tax plan that needed economic substance to hold water, and not a financial investment transaction that came with tax advantages.<sup>359</sup>

Records of email messages obtained by the Subcommittee establish that the size of the POINT trade Quellos and Mr. Saban were negotiating was keyed not to an amount of money he wanted to invest in the basket of stock, but to the amount of the loss embedded in that basket. For example, on July 17, 2001, Mr. Hanson informed Mr. Puri of Euram that:

“The trade for Saban is becoming rather imminent. We have been asked by the client to present them with two scenarios. One basket with losses of \$750M and one basket with \$800M. Only one basket will be chosen at the end of the day but since the economics have not yet been nailed down we need to be prepared to consider both scenarios. ... I need you to verify that the per share basis values are correct, that the shares under either scenario are available and that the total losses are as shown. ... I have been told that there is absolutely no margin for error with this trade due to its size and our excellent relationship with the client. I cannot stress enough that we make sure that everything ties out as far as the available shares and corresponding losses....”<sup>360</sup>

Mr. Saban did not have sufficient cash to fund an \$800 million purchase, so Quellos arranged for a loan to finance the transaction and the collar on the basket of securities. The loan was to come from HSBC Bank, which had outbid several other banks in negotiations with Quellos. HSBC is one of the world’s largest banking institutions. It operates 9,500 offices in 76 countries throughout the world,<sup>361</sup> serving 125 million customers.<sup>362</sup> It has over 200,000 shareholders<sup>363</sup> and had net income of \$888 million in the three months ending March 31,

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<sup>359</sup> *Id.*

<sup>360</sup> 7/17/01 email from Mr. Hanson to Mr. Puri (PSI-QUEL39463).

<sup>361</sup> HSBC Website, [www.hsbc.com/hsbc/about\\_hsbc](http://www.hsbc.com/hsbc/about_hsbc) (viewed on 7/12/06).

<sup>362</sup> *Id.* at [www.hsbc.com/hsbc/investor\\_center/fast\\_facts](http://www.hsbc.com/hsbc/investor_center/fast_facts) (viewed on 7/12/06).

<sup>363</sup> *Id.*

2006.<sup>364</sup> The company has been operating since 1865, when the Hong Kong Shanghai Banking Corporation limited was established.<sup>365</sup> Today, the HSBC Group includes member institutions around the world in sectors ranging from securities to trustee services to personal and commercial banking.<sup>366</sup>

HSBC was told by Quellos that the purpose of the loan was to fund a financial transaction that combined the potential for making a profit with substantial tax advantages. One document prepared by HSBC in connection with the loan approval process stated: “The deferral of ~\$700-750 million for 5 to 10 years is the economic benefit that provides Quellos with its fee. Assuming a risk free rate on triple tax exempt municipal bonds of 3.75% annually compounded money for five years on \$700 million, Quellos would save Saban ~\$140 million after tax over five years.”<sup>367</sup>

On August 30, 2001, HSBC processed an amendment to the loan approval to increase the amount of the loan because Silverlight Enterprises LP, the Saban partnership that held half of the FFWW stock and that was going to be the borrower on the loan, had reevaluated the amount of loss it wanted to acquire.<sup>368</sup> In addition, over the period August 30 through the time of the trade, Quellos had HSBC recalculate the price of the collar several times, as Mr. Saban’s need for loss basis changed<sup>369</sup> or as the market changed the total price of the shares needed to achieve the target loss.<sup>370</sup>

Quellos told HSBC that “Barnville buys entities with losses that existing shareholders can not use the tax deductions, ie foreign entities

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<sup>364</sup> HSBC 10-Q for the period ending 3/31/06 at 6.

<sup>365</sup> HSBC Website at [www.hsbc.com/hsbc/about\\_hsbc](http://www.hsbc.com/hsbc/about_hsbc) (viewed on 7/12/06).

<sup>366</sup> *Id.* at [www.hsbc.com/hsbc/about\\_hsbc/group-members](http://www.hsbc.com/hsbc/about_hsbc/group-members) (viewed on 7/12/06).

<sup>367</sup> Untitled HSBC memorandum (HUI0000885-87, at 86).

<sup>368</sup> 8/30/01 email from Ms. Pan to Mr. Teanor and attached Recommendation for Amendment of Loan (HUI0004119-20)(“Silverlight has an additional basis [sic], which it wants to defer. At this time \$70 million dollar portfolio with the appropriate losses has become available.”).

<sup>369</sup> 9/7/01 email from Mr. Ramquist (Quellos) to Mr. Schreiber (HSBC) (HUI0004197)(“Subject: saban basket – hey rusty – the loss amount has been revised–again(!) can you call myself or chris hirata when you ahve [sic] a moment? Want to discuss a couple of parameters.”).

<sup>370</sup> See, e.g., 9/5/01 email from Mr. Hirata to Mr. Schreiber (HUI0004169-72)(“Rusty,... attached is the latest version of the stock portfolio using closing prices as of today, September 5<sup>th</sup>. Lastly, the collar will be struck at 100%/108% and should expire January 2, 2002 (~115 days based on a trade date of September 10, 2001).”).

with investment losses in the US equity markets but can not write off the losses. They warehouse these losses until a buyer is located that can take advantage of the situation. Jackstone will short the stock holdings in the entities purchased by Barnville as a hedge and entered a stock borrowing arrangement with Barnville to secure the short position.”<sup>371</sup> According to HSBC, Quellos did not tell HSBC about the circular nature of the stock transactions between Barnville and Jackstones. HSBC told the Subcommittee that it believed that Barnville actually owned equity securities, which it had loaned to Jackstones to cover Jackstones’ short sales into the market.<sup>372</sup>

As in the case of the first three transactions, the Saban trade was intended to be short term, notwithstanding the written terms of the documents, such as the warrant, which was for a stated term of five years.<sup>373</sup> Mr. Saban told Subcommittee staff that he understood the stock investment was to have a “quick turnaround” (although he did not know why).<sup>374</sup> Quellos had the warrant unwind agreement drafted weeks before the transaction commenced.<sup>375</sup>

The timing of the Saban trade was tied to the timing of the sale of the FFWW stock to Disney, and was being pushed back a few days at a time during August and September 2001.<sup>376</sup> It was finally expected to take place over several days beginning on or shortly after September 11, but the attack on the World Trade Center and the resulting turmoil in the markets pushed the date back several more days.<sup>377</sup>

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<sup>371</sup> 8/20/01 email from Ms. Pan (HSBC Private Banker) to Mr. Schreiber (HSBC Derivatives Desk)(HUI0004041); Subcommittee deposition of Mary Pan (7/25/06).

<sup>372</sup> Subcommittee deposition of Russell Schreiber (7/18/06) at 18-21.

<sup>373</sup> 9/21/01 Global Call Warrant (PSI-QUEL23726-39).

<sup>374</sup> Subcommittee interview of Mr. Saban (7/19/06).

<sup>375</sup> 9/4/01 email from Mr. Shaikh (Euram) to Mr. Hansen (PSI-QUEL23128-30).

<sup>376</sup> See, e.g., 9/5/01 email from Mr. Hirata to Mr. Schreiber (HUI0004169-70); 9/6/01 email from Mr. Hirata to Mr. Schreiber at HSBC (PSI-QUEL23117-18).

<sup>377</sup> On 9/13/01, HSBC Private Banker Ms. Pan drafted a recommendation to modify the loan distribution terms:

“In light of the market situation, the stock market will only reopen on Monday 9/17/01 but it may not be feasible to purchase \$760 million of stocks and execute the collar transaction of this size until a few days later when the market is settled. However, to meet the tax code requirement, Silverlight must be funded by 9/17/01 before we can have the collar in place. Approval is thus requested to allow funding of the loan on 9/17/01 (subject to proper documentation) with the funds being placed in a collateralized account in name of Silverlight Enterprises, L.P. until the collar can be executed.”

9/13/01 email from Ms. Pan to Mr. Yu and Mr. Schreiber (HUI0004252). Russell Schreiber modified the recommendation by inserting the words “business purpose and” before “tax code



The Saban POINT transaction actually began on September 21, 2001. Mr. Saban held his FFWW stock in two parts, about half in his own name and half through a partnership named Silverlight Enterprises LP. Because of a loophole in the partnership tax law (which was closed in 2004), Quellos was able not only to shield Mr. Saban's own FFWW stock from tax, but also to eliminate the tax on the Silverlight shares through the same transaction – a total of \$1.5 billion completely shielded by a \$712,080,170 “loss”<sup>378</sup> acquired from Barnville.

At the Titanium Trading Partners level, the transaction was essentially the same as the Johnson transaction, except that because Mr. Saban used (borrowed) cash in his transaction, it was possible to pass the cash around, and use it to buy actual securities, which eliminated the need for some of the documentation required for the Johnson transaction to set up and unwind debt relationships among the various entities.

In rough outline, the transaction took place in the following steps on September 21, 2001:

- HSBC loaned \$800 million to Silverlight,<sup>379</sup> a partnership of Haim Saban, family members, and family trusts,<sup>380</sup> which owned approximately \$830 million of FFWW stock.<sup>381</sup>
- Silverlight contributed \$732 million of the HSBC cash to the capital of Titanium Acquisition Corporation (TAC), a Delaware corporation formed on August 17, 2001,<sup>382</sup> for the purpose of acquiring the trading partnership with the basket of stock. Silverlight received TAC stock in return. At the same time, Silverlight loaned the balance of the \$800 million loan to TAC in exchange for a \$68 million debenture.<sup>383</sup>

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requirement.” 9/13/01 email from Mr. Schreiber to Ms. Pan and Mr. Yu (HUI0004253).

<sup>378</sup> Chuck Wilk Representation Certificate attached to Bryan Cave Tax Opinion (HUI 0001169-70).

<sup>379</sup> HSBC summaries of account activity pertaining to Saban transaction (HUI0000023-35).

<sup>380</sup> 7/13/06 letter from King & Spaulding LLP to the Subcommittee at 1-2.

<sup>381</sup> 8/22/01 HSBC Credit Memorandum (HUI0000720-40).

<sup>382</sup> Organization Meeting by Written Consent of Sole Shareholder of Titanium Acquisition Corporation (PSI-QUEL24925-26).

<sup>383</sup> 7/13/06 letter from King & Spaulding LLP to the Subcommittee at 2. A debenture is an unsecured bond or debt instrument.

- Pursuant to the TAC operating agreement<sup>384</sup> and an Assignment of Rights Agreement,<sup>385</sup> Barnville contributed a basket of stock selected by Quellos from the Barnville/Jackstones portfolio to Titanium Trading Partners (TTP), a Delaware Limited Liability Company (LLC) formed by Barnville and Euram subsidiary EAICS that elected to be taxed as a partnership. The basket of stock was worth approximately \$680 million, but had a purported cost basis, based on the Barnville/Jackstones trades, of \$1.481 billion.<sup>386</sup> In addition, Barnville contributed approximately \$88.7 million of additional securities that it acquired with the funds received from TAC in the next steps of the transaction several days later. The \$88 million additional shares did not have any built in loss.<sup>387</sup> The combined value of the total basket was approximately \$769 million as of September 21.
- Barnville, TTP, and Jackstones entered into the previously mentioned “Assignment of Rights Agreement,” similar to the Novation Agreement in the Johnson trade. Under this agreement, the three parties acknowledged that what Barnville contributed to TTP was its rights to return of the shares from Jackstones under the stock lending agreement, and Jackstones agreed to deliver the shares on demand to TTP, rather than to Barnville. Barnville retained the obligation to return the cash collateral to Jackstones if TTP called for delivery of the shares.<sup>388</sup>
- TTP issued a Global Call Warrant to Euram subsidiary EAISL for a premium of \$345,273,000.<sup>389</sup> The warrant contained a provision that, if the basket of stock was sold by TTP, EAISL reserved the right to “put” the warrant back to TTP at any time, in exchange for a return of the entire premium, plus all interest earned while it was invested. TTP agreed to let EAISL hold the premium in an account on EAISL’s books.

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<sup>384</sup> Operating Agreement of Titanium Trading Partners, LLC (PSI-QUEL26640-77).

<sup>385</sup> Assignment of Rights Agreement (PSI-QUEL26679-96).

<sup>386</sup> Chuck Wilk Representation Certificate attached to Bryan Cave Tax Opinion (HUI0001169-70)

<sup>387</sup> *Id.*

<sup>388</sup> Assignment of Rights Agreement (PSI-QUEL26679-96).

<sup>389</sup> Subscription Agreement (PSI-QUEL26697-703); 9/21/01 Global Call Warrant (PSI-QUEL23726-39).

Three days later, on September 24, 2001, the following additional steps occurred:

- TAC used \$769 Million of the cash received from Silverlight to purchase a 99 percent interest in TTP from Barnville,<sup>390</sup> and Ms. Saban purchased the remaining 1 percent of TTP shares from Eram's subsidiary for \$7.8 million.<sup>391</sup>
- In a step which did not occur in the Johnson transaction, Barnville transferred \$667 million<sup>392</sup> of the cash borrowed from HSBC to Jackstones, as a return of the cash collateral and Jackstones transferred the cash to HSBC to purchase shares of the same stocks as in the original basket, for delivery to TTP's custody account at HSBC. Because HSBC required that all accounts through which the cash or securities flowed be maintained at HSBC, these transactions happened almost simultaneously.<sup>393</sup> Under a Stock Loans Unwind Agreement executed September 24,<sup>394</sup> the payment from Barnville to Jackstones fulfilled Barnville's obligation to return approximately half of the original "cash collateral" related to these shares.<sup>395</sup>
- Barnville transferred an additional \$101 million directly to HSBC to acquire additional securities for TTP's account,<sup>396</sup> representing the shares it purportedly contributed on September 21.

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<sup>390</sup> Membership Interest Purchase Agreement – Titanium Acquisition Corporation and Barnville Limited (PSI-QUEL24404-26).

<sup>391</sup> Membership Interest Purchase Agreement – Cheryl Saban and EAICS (PSI-QUEL24438-58).

<sup>392</sup> The difference between this amount and the amount of securities purportedly contributed to TTP on September 21 appears to result from market swings in the volatile stocks in the basket over the three day period.

<sup>393</sup> Subcommittee deposition of Russell Schreiber (7/18/06) at 53; HSBC Cash Flows Diagram (HUI0000477) and Transaction Breakdown (HUI0000421).

<sup>394</sup> Stock Loans Unwind Agreement (PSI-QUEL26713-17).

<sup>395</sup> The cash collateral attributable to the shares in the TTP basket would have been equal to the original purchase price of approximately \$1.481 billion, not just the present fair market value of \$769 million. The Subcommittee found no document explaining why Jackstones would give up the shares to TTP when Barnville was giving back cash collateral equal to only the present, diminished value of the stock instead of the full original purchase price it was entitled to.

<sup>396</sup> HSBC Silverlight Enterprises LLP Transaction Breakdown (HUI0000421).

- TTP purchased a collar from HSBC on the complete basket of stock. The collar included a “put” at 100 percent of the original purchase price, to protect against any decline in the value of the securities, and a “call” at 108 percent of the purchase price, which would limit the amount of profit to 8 percent of the purchase price.<sup>397</sup> In other words, because of the collar, the taxpayer could not realize an economic loss on the securities while his partnership held them, and his possible gross profit, before costs and fees, was capped at 8 percent.

Throughout this process, HSBC required that all bank accounts and securities custody accounts for all entities involved in the POINT transaction be maintained at the bank, so that the bank would have complete control over the funds and the real stock through all steps in the process.<sup>398</sup> As a result, the money never left the bank, but passed from account to account, until the point came to purchase securities, and then the securities were moved from one HSBC custody account to another, so that the bank’s security interest securing the loan would at all times be protected until the stock was sold. At that point, the proceeds would again be placed and maintained in accounts at the bank until the loan was repaid.

As of September 24, 2001, HSBC estimated that its total fees on the transaction would be \$8,890,000.<sup>399</sup>

While the Titanium Trading Partners transaction was playing out, Mr. Saban’s partnership, Silverlight, which now owned 99 percent of Titanium Acquisitions, as well as about \$830 million of FFW stock with a very low basis, engaged in another step in the transaction that was unique to Mr. Saban’s case. Because approximately half of Mr. Saban’s FFW interest was held by Silverlight, Quellos added an additional step to Mr. Saban’s POINT transaction that would eliminate and not just defer the tax on Silverlight’s FFW stock. On September 28, 2001, Silverlight transferred all of the TAC stock it had just acquired to Mr. and Mrs. Saban in complete liquidation of their partnership interests. At

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<sup>397</sup> 9/24/01 Collar Confirmation (PSI-QUEL23686-93).

<sup>398</sup> 8/22/01 HSBC Credit Memorandum (“All parties to this transaction must have accounts with HSBC such that loan the proceeds [sic] and the stock portfolio and the collar will all be controlled in-house.”) (HUI0000720-40, at 37).

<sup>399</sup> 9/24/01 email from Mr. Yu to Joseph M. Petri (HUI0004357)(although a portion of the loan fees projected in this email were subject to being reduced if the loan were paid off before the full 120 day term, the full amount was actually paid.) See also Titanium Trading Partners LLC Daily Report as of November 13, 2001 (PSI-QUEL28891).

the same time, Silverlight transferred the Debenture it had acquired from Titanium Acquisition Corporation to another Silverlight partner in liquidation of its interest. As a result of these two distributions, Silverlight claimed an increase, or “step up,” in the tax basis of its remaining assets – the FFWW stock – in the amount of about \$760 million, which allowed it to sell \$760 million of the FFWW stock essentially tax free. This tax savings was in addition to the tax saved on Mr. Saban’s half of the FFWW stock based on the loss stock now contained in Titanium Trading Partners. At the time, this “step up” in basis was allowed (assuming the underlying POINT transaction had economic substance) by section 734(b)(1)(B) of the tax code. In other words, the way this provision of the partnership tax law was written in 2001, Quellos was able to design this part of the POINT transaction to, in theory, allow Mr. Saban a double tax benefit for his investment. Section 734(b)(1)(B) was amended in 2004 to avoid this result in future cases.<sup>400</sup>

After the TAC stock was distributed to the Sabans and Silverlight took its step up in basis, it sold the FFWW stock to Disney on October 24, 2001, and reported a loss on the sale of approximately \$2 million.<sup>401</sup> It used the cash received from the sale to pay off the \$800 million HSBC loan that financed the POINT transaction.<sup>402</sup>

After the September 24, 2001 acquisition of the securities and the purchase of the collar, Mr. Saban, his representatives, and Quellos began to closely monitor the securities, looking for an appropriate time to get out of the trade with as much gross profit as possible, considering the volatility of the market. Quellos provided daily summaries of the stock prices to assist in this process.<sup>403</sup> After approximately two months, Mr. Saban decided he wanted to liquidate the portfolio to avoid losing the gains that had been made since September 24. Quellos thought there was still some prospect for additional upward movement in the prices, and Mr. Saban agreed to a compromise, in which they would sell off 75 percent of the basket and hold the rest. A day later he decided to sell completely. As a result, the securities were sold over the two day period

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<sup>400</sup> American Jobs Creation Act of 2004, section 833(c)(1). P.L. 108-37, 118 Stat. 1418, 1591 (10/22/04).

<sup>401</sup> 7/13/06 letter from King & Spaulding LLP to the Subcommittee.

<sup>402</sup> 10/23/01 email from Ms. Pan to Adam Chesnoff and Matthew Krane (PSI-QUEL23097).

<sup>403</sup> See, e.g., 9/26/01 email from Mr. Hirata to Mr. Chesnoff, Mr. Saban, and Mr. Krane transmitting Daily Performance Update (PSI-QUEL39489); 9/26/01 sample Daily Report (PSI-QUEL28976).

of November 12<sup>404</sup> and 13, 2001.<sup>405</sup> The collar was unwound in two stages on the same dates,<sup>406</sup> and the Global Call Warrant was put back to Titanium Trading Partners by EAISL,<sup>407</sup> which cancelled the premium that was purportedly due to Titanium on the warrant.<sup>408</sup>

By the time the Titanium Trading Partners basket was sold and the warrant unwound, Mr. and Mrs. Saban had contributed their FFWW stock, through intermediaries, into Titanium Trading Partners<sup>409</sup> and Titanium Trading Partners had sold the FFWW stock to Disney.<sup>410</sup> The built-in loss claimed on the Barnville basket when HSBC sold the securities on November 12 and 13, 2001, together with the costs incurred on the unwind of the collar, amounted to approximately \$699 million, which more than offset the approximately \$686 million realized on the sale of FFWW to Disney.<sup>411</sup>

Thus, Mr. Saban was able to offset approximately \$1.446 billion in gain from FFWW stock sales, \$760 million through Silverlight and \$686 million through Titanium Trading Partners.

As was the case in the 2000 Reka transaction, Quellos and Euram prepared the operative documents for execution long after the fact, notwithstanding that they all bore dates of September 21 and 24, 2001. For example, in an email dated June 4, 2002, Brian Hanson of Quellos wrote to Mr. Saban's representative Matthew Krane:

“Attached is a copy of the WRITTEN CONSENT OF THE SOLE DIRECTOR OF TITANIUM ACQUISITION CORPORATION prepared by Bryan Cave [tax counsel retained by Quellos for the Saban transaction] with respect to the paid-in capital account. Bryan Cave has indicated to us that any amounts that are not declared as paid-in-capital are

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<sup>404</sup> 11/12/01 email from Mr. Schreiber to Mr. Hansen, Re Partial buyout of Collar (PSI-QUEL23448).

<sup>405</sup> 11/13/01 email from Mr. Schreiber to Mr. Hansen (PSI-QUEL23447).

<sup>406</sup> 11/12/01 collar unwind transaction confirmation (PSI-QUEL24475); 11/13/01 Amended Transaction Cancellation Agreement (PSI-QUEL23695-96).

<sup>407</sup> 11/16/01 letter from EAISL to Titanium Trading Partners LLC (PSI-QUEL26718-19).

<sup>408</sup> 12/31/01 EAISL Statement of Account (PSI-QUEL23701).

<sup>409</sup> 7/13/06 letter from King & Spaulding LLP to the Subcommittee; Copies of Stock assignments (KS-00001022, 24, 26, 35, 43, and 50).

<sup>410</sup> 7/13/06 letter from King & Spaulding LLP to the Subcommittee.

<sup>411</sup> *Id.*

considered surplus under Delaware law. The resolution should be dated 9/24/01.”<sup>412</sup>

Similarly, in September 2002, a year after the events, Quellos decided to create an entire set of books for Titanium Trading Partners because Bryan Cave needed to say in their opinion that they had inspected the books. Brian Hanson wrote Arfan Shaikh at Euram: “[W]e need to construct what has been deemed the ‘books and records’ of TTP. Bryan Cave is opining to certain elements of the transaction that require that they have seen such books and records.”<sup>413</sup> Mr. Hanson asked that Euram send over what they had, and a week later Mr. Arfan responded with the following message:

“I’m couriering over the Saban material today so you should get it tomorrow. ... You should, however, note the following:

“1. All the documents have been executed by our counterparties (by which I mean Barnville, Jackstones, European American Investment Corporate Services, EA Investment Services and Titanium Trading Partners (for the brief time we were the managing member)). A number of documents have not been signed by your counterparties. As you know, I have chased for these signatures on many occasions (and I know you have also done this). I expect as a quid pro quo for providing these documents that we will receive a full bible of transaction documents that were executed.

“2. I have no confidence that the documents that I am sending you were the ones that were shown or signed by your clients. I think that the body of the documents are fine but I do recall that cash flows and maybe the portfolio of stock was adjusted at the last minute without our involvement. For this reason, I would ask that you look at the schedules of the relevant agreements to ensure that the stocks, numbers and purchase price are as you understand them to be.

“3. In particular, the irrevocable instructions to HSBC present me with the biggest problems. These were changed on a number of occasions (even though they were meant to be ‘irrevocable’) and we were not involved in any of these

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<sup>412</sup> 6/4/02 email from Mr. Hanson to Mr. Krane (PSI-QUEL39555).

<sup>413</sup> 9/25/02 email from Mr. Hanson to Mr. Shaikh (PSI-QUEL39559).

alterations. I chased HSBC for their countersignature on these documents for months and finally got some unsatisfactory faxed signature pages where the numbers had been altered (without our prior consent). I would recommend that you check these very thoroughly before handing them over to the lawyers.

“4. We had no involvement in Titanium Trading Partners (other than negotiating the operating agreement) and Titanium Acquisition Corp. We therefore can contribute very little to the books and records of those corporations.”<sup>414</sup>

Notwithstanding the defects in the documents as of October 2, 2002, Quellos was able to produce a set of books for Titanium Trading Partners that satisfied the legal opinion writers by November 25, 2002, when the opinions were delivered.<sup>415</sup>

The firm Quellos decided to use for the Saban tax opinions was Bryan Cave. Founded in Saint Louis, Missouri, in 1873,<sup>416</sup> Bryan Cave now has offices in thirteen cities, including Los Angeles, New York, Shanghai, and Kuwait.<sup>417</sup> Its practice areas include “regulatory/tax,” “business/transactional,” and litigation.<sup>418</sup> The firm’s lawyers practice in Client Service Groups (CSGs), or Industry Practice Teams, one of which is Tax Advice and Controversy.<sup>419</sup>

The first work Bryan Cave did for Quellos on the POINT transactions was at the very end of the Robert Wood Johnson IV transaction, when he and his advisors decided to move assets from Reka, which was a Cayman Islands entity, to Reka I LLC, which was established in Delaware. This process, which Quellos referred to as “domesticating” the partnership entities, required the preparation of legal documents, and Bryan Cave was retained to do this.<sup>420</sup> Later, the firm

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<sup>414</sup> 10/2/02 email from Mr. Shaikh to Mr. Hanson (PSI-QUEL26915-17).

<sup>415</sup> U.S. Federal Income Tax Opinion to Titanium Trading Partners LLC (KS-00001092-1192); U.S. Federal Income Tax Opinion to Silverlight Enterprises LP (KS-00001226-1327).

<sup>416</sup> Bryan Cave website, [www.bryancave.com/firm/history.asp](http://www.bryancave.com/firm/history.asp) (viewed 7/13/06).

<sup>417</sup> *Id.* at [www.bryancave.com/firm/locations.asp](http://www.bryancave.com/firm/locations.asp).

<sup>418</sup> *Id.* at [www.bryancave.com/practice/practice.asp](http://www.bryancave.com/practice/practice.asp).

<sup>419</sup> Bryan Cave website, [www.bryancave.com/practice/csglist.asp](http://www.bryancave.com/practice/csglist.asp) (viewed 7/23/06).

<sup>420</sup> See, e.g., 8/23/00 email from Mr. Robbins to Mr. Hirata (PSI-QUEL27131) (“can you gather a documentation package for Burgundy and Reka for Bryan Cave?”); 9/22/00 email from Lana Phillips (Bryan Cave) to Eric Schuehle (PSI-QUEL27125) (“am working with Betsy Smith



became involved in the second group of POINT transactions. Bryan Cave not only prepared the legal opinions for the Saban transaction, they assisted in drafting transactional documents, some in advance of the transaction, as well as the detailed factual representations it asked Mr. Saban to sign, on which the opinion was premised. The process followed seems to have been to determine the desired result to be reached in the opinions, and then to draft documents and factual representations that supported that result.

For example, in an email dated approximately three weeks before the Saban transaction commenced, Bryan Cave attorney Lana Phillips sent Quellos draft consents relating to the Saban trading partnership, which was to be called Titanium Trading Partners LLC, with the following comments:

“These 4 consents were drafted in one document to make them easier for us to keep track of. Unfortunately, when they were drafted they were not done in any particular order, so that when you open the whole document to print, the order of the consents inside seems a bit confusing. Sorry about this. I’d rather not indicate the sequence of these documents in their titles because the creation and ownership of the LLC by Barnville and EAICS must be completely independent from the later transfer to and ownership by TAC [Titanium Acquisition Corporation] and Cheryl [Saban]. Showing a clear sequence seems to betray that independence. When these documents are sent to be executed, we will place them in correct order and give explicit instructions as to the order of signing. To make your review easier for now, I have included boxes in the upper right-hand showing ‘DRAFT - Document \_\_\_\_.’ ... Once we’ve received final approval, we will take off the “DRAFT” legend and send out the final copies for signature. (I will also be sure to take off the document number from these docs.)”<sup>421</sup>

In other words, the consents were part of a carefully orchestrated series of steps that all of the participants needed to understand, but the documents were being drafted to create the appearance that they were being separately executed by independent parties engaged in an arm’s length transaction.

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on the domestication of both Burgundy and Reka.”).

<sup>421</sup> 9/4/01 email from Ms. Phillips to Mr. Hanson (PSI-QUEL23126)

The legal opinions prepared by Bryan Cave<sup>422</sup> were based on extensive factual representation statements signed by various persons, including Mr. Saban, who signed representation statements on behalf of himself,<sup>423</sup> Titanium Acquisition Corporation,<sup>424</sup> and Titanium Trading Partners.<sup>425</sup> Mr. Saban told the Subcommittee that he did not read these representation statements before signing them and that, on reading some of the representations now, could not have attested to the matters covered if he had read them at the time. He said the extent of his discussions with Bryan Cave lawyers was a single meeting in which he spent about half an hour answering their questions about the investment portion of the plan. Otherwise, all of his communications with Bryan Cave were through his personal tax lawyer, Matthew Krane, who handled all of the technical matters. Some of the items he said were completely inaccurate, such as the statement in paragraph 16 of his own representation statement<sup>426</sup> that he had numerous meetings with Matt Krane to resolve their differences over how his partnership Silverlight should invest in Titanium Trading Partners. He told the Subcommittee that he never wanted to invest partnership funds in things Matt Krane said were inappropriate, as the representations said. With respect to a number of other paragraphs, he said that if he had been asked to read the document at the time, he would have said to take the paragraphs out, because he had no idea what they were talking about.<sup>427</sup> He also signed detailed factual representations for Titanium Acquisitions and Titanium Trading partners, but said he had no idea what role the foreign entities played in the transaction.<sup>428</sup>

The statement of facts in the opinion itself contains an extensive recitation of events, and enumerates one or more business purposes for every aspect of the structure designed by Quellos. However, the statement of facts does not mention that tax consequences were ever discussed or considered. In fact, the only statements pertaining to tax

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<sup>422</sup> U.S. Federal Income Tax Opinion to Titanium Trading Partners LLC (KS-00001092-1192); U.S. Federal Income Tax Opinion to Silverlight Enterprises LP (KS-00001226-92).

<sup>423</sup> Haim Saban Representation Certificate attached to Bryan Cave Tax Opinion to Titanium Trading Partners LLP (KS-00001092-1192, at 1158-62).

<sup>424</sup> Titanium Acquisition Corporation Representation Certificate attached to Bryan Cave Tax Opinion to Titanium Trading Partners LLP (KS-00001092-1192, at 1185-90).

<sup>425</sup> Titanium Trading Partners Representation Certificate attached to Bryan Cave Tax Opinion to Titanium Trading Partners LLP (KS-00001092-1192, at 1191-92).

<sup>426</sup> Haim Saban Representation Certificate attached to Bryan Cave Tax Opinion to Titanium Trading Partners LLP (KS-00001158-62).

<sup>427</sup> See, e.g., *Id.*, paras. 21, 24, 25, 27, 29, and 31.

<sup>428</sup> Subcommittee interview of Mr. Saban (7/19/06).

losses are one reference to the amount of the basis acquired and the decline in value of the stocks, and a sentence at the end of the fact recitation that “the amount of gains and losses with respect to those sales of the Portfolio is set forth in a chart labeled Exhibit A.”<sup>429</sup> There is no suggestion in the statement of facts that the Sabans were acquiring a tax loss over \$700 million more than their investment in Titanium Trading Partners. The legal analysis portion of the Bryan Cave opinion states in several places that the parties involved in Titanium Trading Partners expected to make, and had a purpose of making a pre-tax profit independent of any tax benefit, but without characterizing the amount of the expected profit or comparing it with the expectation of a tax loss.

John Barrie of Bryan Cave, who wrote the opinion, told the Subcommittee that he and his associates prepared the representations after extensive consultation with Mr. Saban’s lawyer Matthew Krane, and after one meeting of about an hour with Mr. Saban and Mr. Krane during which Bryan Cave satisfied themselves that Mr. Saban understood the outlines of the transaction and had a profit motive for entering into the transaction. His recollection was that the representations were sent to Mr. Saban in New York for review and that Bryan Cave got a confirmation by voicemail that he had read and understood them and agreed with them.<sup>430</sup>

Some of the key facts in the opinion, such as the basis in the loss stock, were attested to by Chuck Wilk of Quellos in a representation letter signed by him.<sup>431</sup> Other important facts were contained in representations signed by Barnville and others, including verification of what was contributed to Titanium Trading Partners,<sup>432</sup> and Bryan Cave appears to have relied on those representations. Mr. Barrie told the subcommittee that Bryan Cave primarily looked to Quellos for information about the Barnville Portfolio. Although there was an ambiguity in the representation when it said Barnville contributed its “positions” in certain stocks, Mr. Barrie told the Subcommittee that he understood that what Barnville contributed to Titanium Trading Partners was outright ownership of shares.<sup>433</sup> He said he was not informed that

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<sup>429</sup> Bryan Cave Tax Opinion to Titanium Trading Partners LLP at 18-19 (KS-00001092-1192, at 1185-90).

<sup>430</sup> Subcommittee interview of Mr. Barrie (7/28/06).

<sup>431</sup> See, e.g., Chuck Wilk Representation Certificate attached to U.S. Federal Income Tax Opinion to Titanium Trading Partners LLC (KS-00001092-1192, at 1169-78).

<sup>432</sup> See, e.g., Barnville Limited Representation Certificate attached to U.S. Federal Income Tax Opinion to Titanium Trading Partners LLC (KS-00001092-1192, at 1188-90).

<sup>433</sup> Subcommittee interview of Mr. Barrie (7/28/06).

Barnville had acquired the securities from Jackstones in a short sale that was immediately covered by a loan of the same stocks back to Jackstones, or that the purchase price owed to Jackstones was offset by an equal amount of cash collateral owed to Barnville by Jackstones.<sup>434</sup> However, a Bryan Cave memorandum dated June 28, 2002, listing documents they required for their “due diligence” prior to issuing an opinion includes the Barnville/Jackstones stock purchase agreements, the global securities lending agreement, and the confirmations of individual securities loans corresponding to each stock purchase agreement.<sup>435</sup>

Unlike Mr. Steinberg of Cravath, Swaine & Moore, Bryan Cave does not appear to have assisted in the design of the basic POINT structure, although they did extensive transactional work to mesh the POINT structure with Mr. Saban’s existing structure of family trusts and partnerships. They also did considerable work on the drafting of transaction documents which gave them full knowledge of the sequence of steps in the transaction and the close proximity in time of many of the planned steps. For example, they were fully aware that the five year warrant was extinguished shortly after the Sabans acquired Titanium Trading Partners. However, Mr. Barrie indicated that he was not aware that the elimination of the warrant had any effect on the profit calculations.<sup>436</sup>

The fees charged by Bryan Cave for work on the point transaction were billed to Quellos. Their fees for the Saban transaction totaled \$1.3 million.<sup>437</sup> However, since they were billed to and paid by Quellos, they are included within Quellos fees.<sup>438</sup>

Mr. Saban told Subcommittee staff that Matthew Krane explained that the total fees on the Quellos transaction would be around \$50 million.<sup>439</sup> He does not remember if Krane gave him an estimate of how

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<sup>434</sup> *Id.*

<sup>435</sup> 7/28/02 Bryan Cave Memorandum to Mr. Wilk and Mr. Krane (PSI-QUEL23703-08).

<sup>436</sup> Subcommittee interview of Mr. Barrie (7/28/06).

<sup>437</sup> *Id.*

<sup>438</sup> 3/1/01 Letter Agreement, Re: Haim and Cheryl Saban, the Alpha Family Trust, Silverlight Enterprises, L.P. (KS-00001062-72).

<sup>439</sup> In a letter dated 7/13/06, Mr. Saban’s counsel provided the Subcommittee with a schedule of professional fees related to the POINT transaction and the Fox Family World Wide sale. This schedule included \$7,688,611 for Euram and \$53,909,930 for Quellos. The letter stated that the expenses on the schedule (totaling over \$90 million in all) contained some attributable to the FFWW sale to Disney and that they had no clear way of breaking the fees out

much “profit” he might make on the stock transaction, but he said he thought he ultimately made some money on that part of the deal, considering only the fees relating to the stock transaction itself. However, he also said he considered that the total fees were for the total package (the tax transaction and the stock transaction) and said he clearly did not make enough on the stock trade to cover the total amount of fees and costs.<sup>440</sup>

In fact, the total gross profit on the trade reported to Mr. Saban by Quellos was \$129,927,084, which was reduced by the costs associated with the collar to \$13,167,623. After subtracting additional loan fees, Euram’s structuring fee of \$7,688,611,<sup>441</sup> and interest expenses, Quellos estimated the total gain to be \$1,827,183.<sup>442</sup> However, this estimate did not take into account any of the fees paid to Quellos in connection with setting up the POINT structure. The total paid under the initial compensation agreement was \$46,312,500.<sup>443</sup> In addition, under a separate agreement,<sup>444</sup> Quellos received a 17 percent “performance fee” in the amount of \$7,597,430<sup>445</sup> that was paid out of the “gross profit” on the stock trade. Taking this performance fee alone into account would reduce the “profit” to a \$6 million loss. Taking all the Quellos fees into account would produce a true economic loss on the trade of around \$40,000,000. Of course, if the transaction is viewed in the context of its true purpose of generating \$1.5 billion in tax losses, it was extremely profitable.

Quellos’ total compensation for the Saban POINT trade was \$53,909,930, which Quellos allocated between Silverlight and Titanium Trading Partners.<sup>446</sup> The compensation agreement under which the fees were paid expressed them as a percentage – 3.25 percent – of the total

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according to subject. However, the Subcommittee has seen no documents suggesting that Quellos actually provided any services to Mr. Saban other than in connection with the POINT transaction.

<sup>440</sup> Subcommittee interview of Mr. Saban (7/19/06).

<sup>441</sup> The report does not attribute this fee to Euram, but Mr. Saban’s counsel has informed the Subcommittee that this was the amount of Euram’s total fee. 7/13/06 letter from King & Spaulding LLP to the Subcommittee.

<sup>442</sup> 11/13/01 Titanium Trading Partners Daily Report (PSI-QUEL26588).

<sup>443</sup> 10/24/01 email from Mr. Wilk to Ms. Pan (HUI0004387).

<sup>444</sup> Investment Advisory Agreement (KS-00001080-88).

<sup>445</sup> 11/13/01 email from Mr. Hirata to Ms. Pan (PSI-QUEL39534); 11/19/01 wire transfer instructions (PSI-QUEL40188).

<sup>446</sup> 7/13/06 letter from King & Spaulding to the Subcommittee at 6; 10/24/01 email from Mr. Wilk to Ms. Pan (HUI0004387).

gross proceeds on the sale of FFWW stock, up to a maximum of \$1,490,000.<sup>447</sup> Since the target was “full tax deferral of the Disney sale, ad infinitum” (approximately \$1.5 billion, including the losses at both the Titanium Trading Partners and Silverlight levels), setting the fee at a percentage of the sales proceeds was effectively the same as pegging it to the loss.

When shown the circular nature of the trades between Barnville and Jackstones that created the basis for the tax loss, and the emails between Euram and Quellos regarding the need to inform the client’s representatives of the nature of those trades, Mr. Saban told Subcommittee staff that he was never informed of that and had no idea of how the losses were created. His reaction to this information was: “You have before you a very disappointed person, who feels misled, lied to, cheated.”<sup>448</sup>

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<sup>447</sup> 3/1/01 Letter Agreement, Re: Haim and Cheryl Saban, the Alpha Family Trust, Silverlight Enterprises, L.P. (KS-00001062-72).

<sup>448</sup> Subcommittee interview of Mr. Saban (7/19/06).

### VIII. THE WYLY CASE HISTORY

The case histories just discussed provide recent examples of how U.S. persons, guided by U.S. and offshore professionals, have engaged in increasingly sophisticated efforts to hide assets, shift income offshore, and dodge U.S. taxes. The following case history shows how, over a thirteen-year period from 1992 to 2005, two U.S. citizens, Sam and Charles Wyly, guided by an armada of attorneys, brokers, and other professionals, transferred at least \$190 million in stock options and warrants to a complex array of 58 offshore trusts and shell corporations. It shows how the Wyls and their advisers directed the exercise of those stock options and warrants, used the shares to generate investment gains, and used at least \$600 million in untaxed offshore dollars to provide substantial loans to Wyly interests, finance business ventures, acquire U.S. real estate, and purchase furnishings, art, and jewelry for the personal use of Wyly family members.

This case history illustrates the roles played by legal, financial, and other professionals, as well as offshore service providers, to build and manage the Wyly-related offshore network and conceal the Wyls' continued direction and enjoyment of the offshore assets. It also illustrates the use of a number of offshore mechanisms that raise policy concerns, including stock option-annuity swaps; pass-through loans using an offshore vehicle; securities traded by offshore entities associated with corporate insiders; and the use of hedge funds and other investment vehicles to control use of funds placed offshore. Together, these transactions comprise the most elaborate offshore operations reviewed by the Subcommittee.

#### A. Introduction

The Subcommittee began its investigation of this case history in April 2005, after Sam and Charles Wyly filed a publicly available SEC form disclosing their association with certain offshore entities that owned substantial shares of a public company, Michaels Stores Inc., that has long been associated with the Wyls.<sup>449</sup> To examine this matter, the Subcommittee consulted with securities, tax, trust, and offshore experts, conducted numerous interviews, and issued about 40 subpoenas. Subcommittee staff reviewed over 1.5 million pages of documents, including SEC filings, legal pleadings, correspondence, electronic communications, memoranda, trust agreements, incorporation documents, and financial records. While many persons cooperated with

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<sup>449</sup> See 4/7/05 Schedule 13D filed by Sam and Charles Wyly regarding Michaels Stores Inc.

the investigation, others did not. Most Isle of Man and Cayman entities and residents, citing financial privacy laws in their jurisdictions that criminalize the disclosure of client-related information, declined to provide information, documents, or interviews in response to Subcommittee requests.<sup>450</sup>

This part of the Report examines the offshore structure constructed for Sam and Charles Wyly. The evidence obtained by the Subcommittee shows that the Wyly brothers and their representatives exercised significant direction over the trust assets and investment activities of the offshore trusts established to benefit their families, raising U.S. tax, securities, and anti-money laundering compliance concerns.

U.S. tax treatment of trust income depends in large part upon the extent of control retained by the person who funded the trust, often called the grantor. If a grantor places assets in an irrevocable trust and gives up all control over the assets and the trust, the tax code generally treats the trust as a separate taxpayer that pays tax on the income earned from its assets. If the trust distributes income to a beneficiary, the trust gets a deduction for the amount distributed, while the beneficiary pays tax on the amount received, so that the income is taxed only once. On the other hand, if a grantor directly or indirectly retains significant control over the trust or trust assets, the tax code generally treats the trust as a “grantor trust” and generally attributes its assets and income to the grantor. In some cases where a grantor has in form established an irrevocable, independent trust, but in reality retained control over the operation of the trust and the trust’s assets, courts have ruled that the trust was a sham and attributed the trust assets and income to the grantor for tax purposes. In this case history, while the Wyllys and their representatives, acting with the advice of counsel, repeatedly represented that the offshore trusts established to benefit their families were independent entities for U.S. tax purposes, in fact, the Wyllys and their representatives continued to exercise significant direction over the trusts’ assets and investment activities.

U.S. securities law also often turns on the issue of control to determine when an entity must report stock holdings, observe trading restrictions, or refrain from selling securities while in possession of material nonpublic information about a public company. During the

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<sup>450</sup> The Isle of Man entities that declined Subcommittee interview requests were Close Trustees (IOM ) Ltd., IFG International, Inc., Lorne House Trust Company Ltd., the IOM office of Trident Trust Company, and Wychwood Trust Ltd. The Cayman entities and persons who declined Subcommittee interview requests were Michelle Boucher, Irish Trust Company, J.D. Hunter, Security Capital Ltd., and Queensgate Bank and Trust Co. Ltd. The Cayman law firm Maples and Calder consented to an interview but provided extremely limited information.



period examined in this Report, Sam and Charles Wyly were directors and large shareholders of three publicly traded corporations, Michaels Stores, Sterling Software Inc., and Sterling Commerce Inc. Accordingly, under U.S. securities law, both men held the status of corporate insiders, affiliates, and large shareholders of these three corporations, and were subject to special disclosure requirements, trading restrictions, and insider trading prohibitions. During the same period, both men transferred to the offshore entities compensatory stock options and warrants representing the right to purchase millions of shares in these three public corporations.

While the Wyls and their representatives, on the advice of counsel, represented that the offshore entities holding the securities were independent legal entities for securities purposes, the Wyly representatives continually conveyed detailed information to the offshore entities on when and how to exercise the stock options and warrants, and trade the shares. Wyly representatives also directed the offshore entities to arrange their stock holdings to avoid SEC disclosure requirements for large shareholders. In addition, Wyly representatives repeatedly characterized the offshore entities as exempt from trading restrictions on affiliates, and conveyed directions for the entities to engage in securities transactions even during periods when the Wyls may have had material, nonpublic information raising insider trading concerns. Due to Isle of Man secrecy laws and the decision of the Wyls and the three public corporations not to include the offshore entities in their SEC disclosure filings, for many years U.S. regulators and the investing public were unaware of the extent of these offshore stock holdings and trading activity. This case history raises policy concerns about the extent to which executives of U.S. public companies may be using offshore entities to circumvent U.S. securities requirements for corporate insiders.

Control is also key to many U.S. anti-money laundering laws which, for example, require U.S. financial institutions to determine the “beneficial owner” of an offshore trust or corporation before opening an account, to ensure they know who the client is and prevent suspicious persons from gaining entry into the U.S. financial system. When U.S. financial institutions pressed the Wyly-related offshore entities to disclose their beneficial owners, the offshore entities refused to provide specific names of the persons behind the trusts and corporations. Despite their inability to obtain required beneficial owner information, the financial institutions did not close the accounts held in the name of the offshore entities until the fall of 2004, after receiving subpoenas from U.S. law enforcement seeking information about the accounts.

A similar situation arose with respect to the obligation of U.S. financial institutions to file 1099 forms with the IRS reporting certain types of investment and dividend income paid to U.S. account holders. Here, the offshore entities filed W-8BEN forms with the U.S. financial institutions, representing that they were independent foreign entities not subject to 1099 reporting requirements. Although the financial institutions were aware of the entities' relationship to the Wyls, they chose not to treat them as U.S. accountholders subject to 1099 reporting.

In all of these activities, the Wyls were aided by an armada of lawyers, brokers, financial professionals, and offshore service providers. These facilitators set up the offshore entities, provided advice and guidance on how best to structure, operate, and coordinate them, and provided legal, transactional, and administrative services that purportedly enabled the Wyls to maintain direction over the offshore assets without negating the offshore entities' status as allegedly independent actors for U.S. tax and securities purposes. Although many of these professionals took steps to create the appearance that the offshore trusts were independent entities, couching instructions to the offshore trustees as "recommendations" and obtaining paperwork from the trustees to buy, sell, or transfer trust assets, the reality behind these actions was that the Wyls and their representatives continued to exercise significant direction over the assets they had moved offshore.

This case study underscores the fundamental incompatibility of U.S. tax, securities, and anti-money laundering requirements with existing practices in many offshore jurisdictions. Under U.S. law, who has control of assets is often a key factor in determining an individual's tax, securities, and anti-money laundering obligations. As this and other case studies examined by the Subcommittee reveal, offshore jurisdictions typically permit trust grantors and beneficiaries to exert significant control over trust assets and activities, without compromising the allegedly independent legal status of the trusts and trustees. Given that secrecy laws in many offshore jurisdictions where offshore trusts are located make it virtually impossible to detect the identity of trust grantors and beneficiaries, and to determine the extent of their control over trust assets and activities, the potential for abuse is vast. U.S. law enforcement can and should be strengthened to counter such abuse, and where necessary, U.S. laws themselves should be strengthened.

## **B. Case History Summary**

The Report examines the inception and development of the Wyl offshore structure over a thirteen year period, from 1992 to 2005, and analyzes key tax, securities, and anti-money laundering issues.

The first section examines how the offshore trusts functioned. The evidence shows that Sam and Charles Wyly exercised significant direction over the trust assets and the investment activities of the trusts established to benefit their families. The Wyls and their representatives typically conveyed their decisions about trust assets to individuals named in the trust agreements as “trust protectors.” These trust protectors, who were selected by the Wyls, were in constant communication with Wyly family members and their representatives. The trust protectors used a steady stream of telephone calls, correspondence, faxes, and electronic mail to convey decisions to the trustees of the offshore trusts. The trust protectors typically worded these decisions as “recommendations” to the offshore trustees who, in form under Isle of Man trust law, retained final decisionmaking authority over trust assets, but in practice simply carried out the “recommendations” provided to them. Over the thirteen years examined by the Subcommittee, the offshore trustees rarely questioned a “recommendation” made by a Wyly trust protector and typically implemented the “recommendation” within days of receiving it. The Subcommittee saw no evidence that the trustees acted independently to initiate or implement financial transactions or investments on their own.<sup>451</sup> Rather, the offshore trustees appear to have functioned as administrative cogs to implement the decisions conveyed to them by Wyly representatives about trust assets and activities.

Section two examines how assets were transferred to the offshore trusts. It shows how, over a ten year period from 1992 to 2002, Sam and Charles Wyly transferred offshore over 17 million stock options and warrants that had been awarded to them as compensation from Michaels, Sterling Software, and Sterling Commerce. They transferred these stock options and warrants, collectively worth at least \$190 million, to the offshore shell corporations owned by the offshore trusts benefitting their families. For most, the Wyls received in exchange annuity agreements in which the offshore corporations promised to make future annuity payments to the Wyls. Wyly legal counsel provided written legal opinions concluding that, because the stock options and warrants had been exchanged for annuities of equivalent value, the Wyls did not have to pay taxes on the gains realized when the offshore corporations exercised the stock options and warrants. Instead, Wyly legal counsel advised that the Wyls owed taxes only if and when they actually received the promised annuity payments from those corporations years later. Wyly legal counsel also provided assurances to the three public corporations that had issued the stock options to the Wyls. They

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<sup>451</sup> Because none of the offshore service providers supplied documentation or interviews to the Subcommittee, this analysis is necessarily based on information provided by other parties.

advised the public corporations that the offshore corporations were independent of the Wyllys, and the public corporations thus did not have to not report any compensation to the IRS when the offshore corporations exercised the options, as no tax was due on the compensation until the promised annuity payments were made. In 2003, the IRS announced that similar stock option transactions were potentially abusive tax shelters, that the stock option holders should have paid tax on their stock option compensation, and the corporations issuing the stock options should have reported the compensation in 1099 or W-2 filings. The IRS later announced an initiative allowing persons and corporations who participated in such stock option transactions to settle their potential tax liabilities with reduced penalties. Michaels Stores applied to participate in this settlement initiative; the Wyllys did not.

Section three of this case history examines how the offshore entities used the stock options and warrants to generate millions of dollars in untaxed investment gains. Their first step was to exercise the stock options and warrants to obtain shares in the three U.S. corporations. The offshore entities then sold some shares for cash, pledged others to obtain loans, and engaged in a raft of other securities transactions such as collars, call options, equity swaps, and variable prepaid forwards. The decisions to engage in these transactions were made by the Wyllys and their representatives, and conveyed by the trust protectors to the offshore trustees who implemented them. Relying on advice from counsel, the Wyllys did not pay taxes on any of the offshore trusts' trading gains, even though the U.S. tax code generally requires that income earned by a trust controlled by a U.S. person who funded or is a beneficiary of the trust be attributed to that U.S. person for tax purposes. The Wyly legal position was that the offshore trusts were independent entities whose income was not attributable to any U.S. person.

The Wyllys also did not include the stock holdings of the offshore entities in their filings with the SEC until 2005, even though SEC regulations require large stockholders to disclose all of the shares they beneficially own as well as shares held by groups with whom they acted in concert to buy or sell the securities. Wyly legal and securities advisers took the position that the offshore trusts were independent entities whose securities did not have to be reported in the Wyly filings. Wyly legal advisers and representatives also helped the offshore entities to circumvent SEC disclosure requirements for major shareholders, represented to U.S. financial institutions that the entities were exempt from SEC trading restrictions on affiliates, and helped the offshore entities conduct securities transactions during periods when the Wyllys may have had material insider information. The brokers who carried out

these securities transactions, with one exception, treated the offshore entities as nonaffiliates, even though they knew the Wyls and their representatives exercised significant direction over the investment activities of the offshore entities. The three public corporations failed to disclose the offshore holdings in their SEC filings, even though they knew the offshore entities had large stock holdings and were associated with the Wyls. As a result, for many years until 2005, U.S. securities regulators and the investing public were unaware of the extent of the Wyly-related offshore stock holdings and trading activity.

The next four sections of the Report examine how the Wyls utilized untaxed offshore dollars to advance their business and personal interests in the United States. Each of these sections contains additional evidence of the extent of Wyly direction over the offshore assets. Section four shows how millions of untaxed dollars were returned to Wyly interests in the United States using pass-through loans funneled through a Cayman shell corporation called Security Capital. Section five shows how more than \$600 million in untaxed dollars were invested in Wyly-related business ventures, including two hedge funds, a private equity fund, an offshore insurance company, and a U.S. energy business, all of whom used these funds on U.S. investments. Section six shows how about \$85 million in untaxed dollars were used to acquire U.S. real estate and build houses for use by Wyly family members. It also shows how untaxed dollars were used to finance real estate loans that supplied millions of offshore dollars to Wyly family members for their personal use in the United States. Section seven shows how nearly \$30 million in untaxed dollars were used to purchase furnishings, artwork, and jewelry for the personal use of Wyly family members. Each of these transactions was the result of decisions initiated and planned by the Wyls and their advisors, and not by the offshore trustees or the executives of the offshore corporations who executed them. Law firms provided guidance on how to structure these transactions purportedly to comply with U.S. tax and securities laws and drafted the paperwork needed for them to function; brokers facilitated the multi-million-dollar international wire transfers that financed this activity.

The final section examines issues related to compliance with U.S. anti-money laundering (AML) laws. Many of the offshore entities opened accounts with U.S. securities firms or the securities divisions of U.S. banks. For decades, U.S. banks have been obligated to “know their customers,” including the natural persons behind offshore corporations and trusts, to ensure that bank services are not misused to further misconduct. In 2001, the Patriot Act extended that requirement to U.S. securities firms who, until then, had operated AML programs on a voluntary basis. In provisions that became effective in 2002, the Patriot

Act explicitly required U.S. banks and securities firms that open a private account with at least \$1 million for a non-U.S. person to “ascertain the identity of the nominal and beneficial owners” of the account.

In 2003, two U.S. financial institutions repeatedly asked the Wyly-related offshore entities to provide the names of their beneficial owners. While the offshore entities let it be known that they were associated with the Wyly family, they would not disclose the names of specific individuals associated with particular offshore entities. The offshore entities also submitted W-8BEN forms to the financial institutions, representing that they were independent foreign entities not subject to certain IRS requirements for reporting investment income paid to U.S. persons, even though U.S. taxpayers exercised significant direction over the offshore entities’ assets and investment activities. The financial institutions accepted the W-8BEN forms and allowed the accounts to continue operating without sufficient beneficial owner information, continuing to facilitate multi-million-dollar securities transactions and wire transfers across international lines. In the fall of 2004, however, after receiving subpoenas from U.S. law enforcement seeking information on the accounts held in the name of the offshore entities, the financial institutions closed the accounts.

Sam and Charles Wyly reaped a number of benefits from their offshore activities, including years-long deferral of taxes on millions of dollars in stock option compensation, nonpayment of taxes on millions of dollars in capital gains held by the offshore trusts they directed, a ready source of capital for their business ventures, and a ready source of funds to finance their personal interests. Among those affected by these offshore activities are the U.S. Treasury, U.S. taxpayers who have to make up the lost revenue, and the investing public who were kept in the dark about the offshore stock holdings and trading activity of entities controlled by the directors of three publicly traded corporations.

### **C. Wyly Business Background**

To understand the investment activities undertaken by the Wyly-related offshore entities, background information about the business careers of Sam and Charles Wyly is necessary.<sup>452</sup> Both are successful businessmen who developed a number of privately held and publicly traded companies into profitable concerns. Samuel E. Wyly and Charles J. Wyly, Jr. were born in Lake Providence, Louisiana, and grew up

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<sup>452</sup> The following information is taken from materials provided to the Subcommittee by the Wyllys, and from various legal pleadings and SEC submissions.

during the Depression. Their first business venture was the University Computing Company, which they founded in 1963, developed into a nationwide computer service and software provider, and later sold in 1987. During the 1960s and 1970s, the brothers founded Datran Inc., a company intended to build transmission lines for computer communications; began Earth Resources Co., an oil refining and mining company; and acquired the Bonanza Steakhouse chain which they turned into a successful franchise business.

In 1981, the Wyly brothers, their colleague Sterling Williams, and others founded Sterling Software Inc. and developed it into a leading provider of business software and services, specializing in large data management. The company went public in 1983. In December 1995, it spun off a separate company, Sterling Commerce, Inc., specializing in software which enabled businesses to exchange information electronically. Sterling Commerce was incorporated in December 1995, and went public in March 1996. In 2000, both companies were sold. Sterling Software was sold to Computer Associates International, Inc. in a \$4 billion stock swap. Sterling Commerce was sold to SBC Communications, Inc. in a \$4 billion cash transaction. The Wyllys had significant stock holdings in both of the companies that were sold.

The Wyly brothers also operated companies unrelated to the software field. In 1983, they purchased Michaels Stores, Inc., an arts and crafts retail chain, and over the following 20 years, took it public and expanded the chain to more than 1,000 stores. In 2006, Michaels announced that it was being sold to a consortium of private equity groups for \$6 billion.<sup>453</sup> In 1997, the brothers acquired Green Mountain Energy Resources, an energy company specializing in the marketing of clean energy. In March 1999, the company filed paperwork with the SEC to go public, but never did, instead attracting private investments from two energy companies, BP Amoco and Nuon NV, a Dutch utility.

In addition to these and other domestic business ventures, the Wyly brothers founded several businesses with offshore components. In 1990, Sam and Charles Wyly founded their first hedge fund, Maverick, which sponsored both domestic and offshore funds. Begun as a Wyly family venture, Maverick was opened to other investors in 1993, and now manages assets in excess of \$11 billion. In 1994, the Wyly brothers and the Wyly family's legal counsel, Michael French, founded an offshore insurance company, Scottish Annuity Company (Cayman) Ltd. A companion company, Scottish Annuity & Life Holdings, Ltd., later renamed Scottish Re Group Ltd., went public in 1998, and recently

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<sup>453</sup> See, e.g., "Consortium Buys Michaels for \$6 Billion," New York Times (7/1/06).

purchased substantial insurance holdings in the United States. In 1995, the Wyly brothers founded another Cayman company called Irish Holdings Ltd.<sup>454</sup> Its only subsidiary, Irish Trust Company (Cayman) Ltd., holds trust company and mutual fund administrator licenses in the Cayman Islands. It provides administrative services to the Wyly-related offshore hedge funds and the Wyly-related offshore trusts and corporations. In 2000, Charles Wyly founded a private investment fund called First Dallas, which includes an offshore company, First Dallas International. In 2001, Sam Wyly founded a second hedge fund, Ranger, which, like Maverick, sponsors both U.S. and offshore investment funds.

Many of the offshore entities associated with the Wyly brothers were structured to benefit their children and wives.<sup>455</sup> Sam and Charles Wyly also established numerous domestic trusts, corporations, and partnerships to hold assets and conduct business, many of which also were structured to benefit their children and wives. A number of these domestic entities had dealings with the Wyly-related offshore entities. In addition, as the children of Sam and Charles Wyly came of age, they also entered the business world, establishing both domestic and offshore trusts, corporations, and partnerships. This Report does not address the Wyllys' domestic investments and holdings, except as they pertain to matters related to the Wyllys' offshore operations. It also does not discuss many of the offshore entities established by or on behalf of the Wyly children.

#### **D. Going Offshore**

Sam and Charles Wyly apparently first became interested in moving assets offshore during the early 1990s. In the spring of 1991, at the request of Sam Wyly, Sharyl Robertson, a key employee of the Wyly family,<sup>456</sup> attended a conference given by an advertised offshore expert,

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<sup>454</sup> Irish Holdings was initially owned by the Bessie and Tyler Trusts, two Isle of Man trusts established to benefit Sam and Charles Wyly and their families. See, e.g., "The Irish Trust Company (Cayman) Ltd. Application for a Restricted Trust License," (PSI00120946-52); 6/6/96 memorandum from Sam to Charles (PSI00109863-64) ("Irish Trust company will remain owned 2/3 by Sam's Family and 1/3 by Charles' Family."). For more information about Irish Holdings and the Irish Trust Company, see below.

<sup>455</sup> In 1955, Charles married Caroline D. ("Dee") Wyly, and had four children, Martha, Charles ("Chip"), Emily and Jennifer. In 1960, Sam Wyly married Rosemary Acton and had four children, Evan, Laurie, Lisa and Kelly. In 1976, Sam Wyly divorced and, two years later in 1978, married Victoria L. ("Torie") Steele. They had two children, Andrew and Christiana. Sam Wyly and his second wife separated in 1988 and divorced in 1990. In 1994, Sam married his current wife, Cheryl Wyly.

<sup>456</sup> The Wyly family employed a number of persons to administer their personal financial affairs; for many years, Ms. Robertson supervised these employees. More information about



David Tedder.<sup>457</sup> Ms. Robertson recalled that this conference had been open to the public and was attended by 20 to 40 other individuals. Afterward, Ms. Robertson wrote a 35-page memorandum entitled, “Asset Protection and Tax Deferral,” summarizing the information provided, and sent it to Sam and Charles Wyly, Michael French, and others.<sup>458</sup>

The Robertson memorandum summarized a wide range of issues presented by Mr. Tedder, including the type of assets that can be protected offshore, the establishment of domestic and foreign trusts, probate and wills, deferred compensation, tax havens, and offshore insurance. In each case, the memorandum described the topic in terms of asset protection and tax avoidance. The memorandum repeatedly referred to the IRS as a “creditor” against whom assets may be protected. Excerpts from her memorandum include the following:

“The three major sources of creditor problems – unknown creditor, IRS – inheritance, IRS – income tax. ...  
Whenever possible eliminate inheritance tax – Tedder says everyone can reduce it to zero. ...  
Whenever possible reduce income tax – both domestically and foreign. ...  
Never let a creditor get your asset, no matter how bad your mistake. (In 18 years of practice, Tedder’s firm has never had a creditor successfully pierce the asset protection setup)....  
You should own some minimal property at death in your name. Tedder recommends \$100. Why? Creditor[s] have a cutoff period of four months to make a claim against an estate, they are forever barred from making a claim thereafter. This includes all creditors – the known, unknown and the IRS. ...

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Wyly family employees and Ms. Robertson is provided below.

<sup>457</sup> Subcommittee interview of Ms. Robertson (3/9/06). Mr. Tedder, a lawyer based in California, apparently was not known to the Wyllys prior to 1991, and stopped providing legal advice to them after 1993. Written presentation to the Subcommittee by Wyly legal counsel (5/15/06). Mr. Tedder apparently spent much of his career providing advice and services to U.S. citizens seeking to move assets offshore. In 2003, he was convicted of money laundering, conspiracy to defraud the United States, and assisting a wagering enterprise, for helping to conceal the movement of funds between U.S. gamblers and an offshore sports betting operation. He was fined \$1 million, forfeited in excess of \$2 million, and sentenced to five years in prison, a term which he is now serving. See United States v. Tedder, 403 F.3d 836 (7<sup>th</sup> Cir. 2005).

<sup>458</sup> Robertson interview (3/9/06); 6/12/91 memorandum from Ms. Robertson to Sam, Charles, and Evan Wyly, Mike French, and Ethel Ketter, on “Asset Protection and Tax Deferral” (PSI\_ED00042362-97)(hereinafter “Robertson memorandum”).

REAL ESTATE ... Sell Equity to FS [Foreign System] on a prom. note & Shared Appreciation ... Tedder mentioned (no names) two big real estate corporations sheltering \$45,000,000 a month thru this arrangement. ...

If you own more than 30% of a corporation a creditor can force dissolution of the corporation with a judgment award. ... A creditor cannot force the sale of a partnership interest.

...

The FLP [Family Limited Partnership] accomplishes the same thing as the Children's Trust without being irrevocable. You still control and have access to the funds. ... You can always get funds out of the partnership and avoid the creditor by taking the funds as salary, loan or a contribution to a new joint venture. ...

FOREIGN SECURITY TRUST (FST) ... Transfer LP [limited partnership] interest of your FLP to your FST. At transfer there is no gift tax and no inheritance tax because it is not a completed delivery. Thru your ownership of the GP of the FLP no control has been lost. ... [Tedder's] firm currently has 3000 FST's in place. ...

Tedder recommends the following jurisdictions – Cayman, BVI, Isle of Man, Cook Islands. ... There are 43 tax havens where less than 2% tax is paid and 60 tax holiday countries.

...

FOREIGN INSURANCE Why? Asset protection and tax benefits. It is not really insurance and works like this: Cash → Foreign Insurance + Term Insurance ... 94% you control investing ... Funds are unavailable to any creditors. A U.S. judgment would not be adhered to. ... If you need access to the funds, you go to a foreign bank and borrow the funds, pledging the foreign insurance as collateral. The foreign insurance compounds tax free until you bring back in. ... There is no reporting obligation to the US on a foreign insurance policy. ... Good for asset protection and secrecy. ...

FOREIGN NON-GRANTOR TRUST ... Be sure your foreign trust documents have a 24 hour clause. This keeps the foreign trustee honest. He knows at any time with 24 hours notice you can change trustee and/or jurisdiction. ...

ANNUITIES ... Cash can be invested anyway you want. ... Creditors can't get at ... You can get cash out of Foreign Corp. thru salary or loan. ... Goes to beneficiary tax free out of your estate ... The IRS will address soon, if you wish tax advantage of this loophole do now. Tedder considers this the best estate planning tool. This is an aggressive tax mode to

take – be sure to file every tax form available and any support schedule that seems pertinent.”

Ms. Robertson recommended that Sam and Charles Wyly attend a subsequent Tedder conference and, three months later, Ms. Robertson and the brothers did.<sup>459</sup> Mr. French, then legal counsel to the Wyly family, told the Subcommittee that he, along with Sam and Charles Wyly, also attended a Tedder conference for about 20 persons in New Orleans.<sup>460</sup> Ms. Robertson said that the Wyly brothers, Mr. French, and she attended followup meetings with Mr. Tedder and his associates, including another California attorney, Michael Chatzky. She said that in late 1991 or early 1992, the Wyls made the decision to move assets offshore.<sup>461</sup>

Ms. Robertson told the Subcommittee that she and Mr. French were the key persons who worked with outside professionals to establish offshore entities for Sam and Charles Wyly in 1992. She said that Mr. French worked with outside legal counsel to address various legal issues, while she handled various administrative issues.<sup>462</sup> According to Mr. French, he and Ms. Robertson traveled to the Isle of Man to meet with several corporate service providers and discuss creating an offshore structure for the Wyls.<sup>463</sup> Sam Wyly apparently also traveled to the Isle of Man to meet with offshore service providers.<sup>464</sup> The first Wyly-related offshore trusts and corporations were established in March 1992.

### **E. The Facilitators**

Like the case histories discussed earlier, Sam and Charles Wyly did not venture offshore alone. They relied on U.S. and offshore professionals to help establish and manage the offshore entities, open U.S. and offshore bank and securities accounts, provide legal advice and opinions, move assets offshore, conduct securities transactions, make investments, create new domestic and offshore entities for various

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<sup>459</sup> Subcommittee interview of Ms. Robertson (3/9/06). This conference apparently took place in September 1991. See Robertson memorandum at PSI\_ED00042362, 69, 70, 73, 74, 76, 85, 87, 90.

<sup>460</sup> Subcommittee interview of Mr. French (4/21/06). Mr. French told the Subcommittee that, at the time, he was unfamiliar with offshore matters and provided no legal advice to the Wyls on this topic.

<sup>461</sup> Subcommittee interview of Ms. Robertson (3/9/06).

<sup>462</sup> *Id.*

<sup>463</sup> Subcommittee interview of Mr. French (4/21/06).

<sup>464</sup> Subcommittee interview of Ms. Robertson (3/9/06).

business ventures, and develop mechanisms to transfer offshore dollars into the United States.

### **(1) Domestic Facilitators**

**U.S. Legal Counsel.** U.S. legal counsel played a key role in helping the Wyls operate offshore. Wyly representatives told the Subcommittee that U.S. legal counsel were routinely consulted about prospective offshore transactions and routinely provided advice and paperwork.<sup>465</sup> The evidence supports that assertion, showing that U.S. lawyers helped identify and negotiate with offshore service providers to establish and manage the Wyly-related offshore entities, devised ways to move Wyly assets offshore purportedly without incurring an immediate tax liability, provided legal advice on securities issues, designed various structures to allow offshore dollars to be invested in U.S. businesses and real estate, and drafted reams of needed paperwork.

For example, three California law firms, Tedder, Chatzky & Berends; Pratter, Tedder & Graves; and Chatzky and Associates, provided legal advice and helped produce written legal opinions supporting the 1992 and 1996 stock option-annuity swaps used to move millions of stock options and warrants offshore.<sup>466</sup> Meadows, Owens, Collier, Reed, Cousins & Blau, a Texas law firm specializing in tax and real estate matters, developed a new type of U.S. management trust for the Wyls that allowed offshore entities to pay 99 percent of U.S. real estate acquisition and operating costs.<sup>467</sup> On several occasions, Meadows Owens represented the offshore entities, for example meeting with Lehman Brothers and SBC when questions arose about whether the offshore entities were subject to Wyly control. Meadows Owens also drafted numerous documents associated with the Security Capital pass-through loans and other transactions involving the offshore entities. Jones, Day, Reavis & Pogue, a major law firm with which Mr. French was then affiliated, provided international tax and securities advice and

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<sup>465</sup> Subcommittee interviews of Ms. Robertson (3/9/06), Ms. Hennington (4/26/06), and Mr. French (4/26/06); written presentation to the Subcommittee by Wyly legal counsel (5/15/06).

<sup>466</sup> Subcommittee interviews of Ms. Robertson (3/9/06) and Mr. French (4/21/06, 6/30/06). See also legal opinions cited in Report section on Transferring Assets Offshore, below. The key lawyers at these firms working on Wyly-related matters included David Tedder and Michael Chatzky.

<sup>467</sup> See Report section on Funneling Offshore Dollars Through Real Estate, below. The key lawyers at Meadows Owens working on Wyly-related matters included Rodney Owens (now deceased), Charles Pulman, and Alan Stroud.

acted as outside counsel to Michaels Stores.<sup>468</sup> Jackson & Walker provided legal advice on corporate and securities matters, including advising some of the offshore entities on their SEC filing obligations.<sup>469</sup> Morgan Lewis & Bockius provided a legal opinion regarding the creation of the foreign grantor trusts established to benefit the Wyly family and advising on their U.S. tax treatment.<sup>470</sup>

According to the Wyllys' current legal counsel, one of the Wyllys' key legal advisers was Michael French, who served as "General Counsel to the Wyly Family" from 1992 until early 2001.<sup>471</sup> Mr. French told the Subcommittee, however, that when he worked for the Wyllys, he did not consider himself to be the family's general counsel, and took a position with the Wyllys because he wanted to leave legal practice and work on business matters. During his tenure with the Wyllys, Mr. French served as a director of Michaels, Sterling Software, and the Wyly-related hedge fund Maverick, and became a key investor and executive at Scottish Re Group.<sup>472</sup> From 1992 until 2000, Mr. French also served as a "trust protector" for the Wyly-related offshore trusts.<sup>473</sup> In late 2000, Mr. French and the Wyllys decided to sever their business ties. In December 2000, Mr. French and the Wyllys signed a written agreement in which Mr. French ceased acting as legal counsel to the Wyly family, resigned from his trust protector positions, and relinquished his ownership interest in several Wyly-related business ventures.<sup>474</sup> He retained his ownership interest and executive position in the Scottish Re Group, and the Wyllys left the management of that venture.

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<sup>468</sup> Written presentation to the Subcommittee by Wyly legal counsel (5/15/06). The key lawyers at Jones Day working on Wyly-related matters included Robert Estep and John McCafferty.

<sup>469</sup> See Report section on Converting U.S. Securities into Offshore Cash, below. One of the key lawyers at Jackson & Walker working on Wyly-related matters was Mr. French, who worked at the law firm from 1970 to 1995, and served as managing partner from 1988 until 1992.

<sup>470</sup> One of the key lawyers at Morgan Lewis working on Wyly-related matters was Charles Lubar.

<sup>471</sup> See, e.g., written presentation to the Subcommittee by Wyly legal counsel (5/15/06).

<sup>472</sup> See, e.g., SEC filings for Michaels, Sterling Software, and Scottish Re Group; 12/21/00 "Settlement Agreement and Mutual Release" between Mr. French and the Wyllys (F000282-89).

<sup>473</sup> For more information, see Report section on Directing Trust Assets, below.

<sup>474</sup> The purpose of the agreement was to "sever all direct and indirect business and professional relationships between French and the Wyllys, to resolve all claims that French has asserted against the Wyllys, and to forever end all disputes between French and the Wyllys." See 12/21/00 "Settlement Agreement and Mutual Release" between Mr. French and the Wyllys (F000282-89).

**U.S. Financial Institutions.** In addition to U.S. legal advisers, the Wyly-related offshore entities used the services of U.S. financial institutions to handle their financial needs. Throughout the thirteen years examined in this Report, the Wyly-related offshore entities obtained brokerage services primarily from one individual, Louis Schaufele, a U.S. stock broker based in Dallas, Texas. He opened and administered U.S. securities accounts for the offshore entities, helped them exercise stock options, buy and sell U.S. securities, obtain loans, hedge stock prices, move assets among accounts, and wire transfer substantial funds across international lines.

During the period under review, Mr. Schaufele worked at three U.S. securities firms, taking the offshore accounts with him each time he moved positions. From 1992 until 1995, he worked for Credit Suisse First Boston (CSFB). Over a three-year period, CSFB opened about 20 accounts for the offshore entities.<sup>475</sup> From 1995 until early 2002, Mr. Schaufele worked for Lehman Brothers which, over the seven-year period, opened about 125 accounts for the offshore entities.<sup>476</sup> From early 2002 until 2004, Mr. Schaufele worked for Bank of America in two of its securities divisions and in association with its private bank.<sup>477</sup> Over this three-year period, Bank of America opened about 65 accounts for the offshore entities.<sup>478</sup> When Mr. Schaufele first moved to Bank of America in 2002, its private bank already had an extensive domestic relationship with the Wyly family.<sup>479</sup> For the next two years, he continued to handle transactions for the Wyly-related offshore entities, while the family's long-term private banker, Marta Engram, handled their domestic accounts.

**Wyly Family Office.** In addition to using outside U.S. legal and financial professionals, Sam and Charles Wyly hired a number of financial and tax professionals to administer their personal financial affairs and those of other Wyly family members. These employees worked at a succession of Wyly-controlled domestic companies in Dallas, most recently Highland Stargate, Inc.<sup>480</sup> For ease of reference,

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<sup>475</sup> See CSFB list of accounts (CSFB0015938-41)(showing accounts from 1992 to 1995).

<sup>476</sup> See Lehman Brothers list of accounts prepared by the Subcommittee Minority Staff (showing accounts from 1995 to 2002).

<sup>477</sup> For more information, see section on Hiding Beneficial Ownership, below.

<sup>478</sup> See Bank of America list of accounts provided to the Subcommittee on 10/24/05 (produced without bates numbers)(showing accounts from 2002 to 2005).

<sup>479</sup> See, e.g., 5/27/04 email from Phil White of Bank of America to Greg Strieby and others, summarizing Wyly relationship (BA005624).

<sup>480</sup> Subcommittee interview of Ms. Robertson (3/9/06).

these domestic companies are collectively referred to in this Report as the Wyly family office. From the mid-1980s until the late 1990s, the head of the Wyly family office was Sharyl Robertson, who began working for the Wyls in 1979.<sup>481</sup> When Ms. Robertson left the Wyly family office to become chief financial officer of Maverick in the late 1990s, she was replaced briefly by Elaine Spang who, in turn, was replaced by Keeley Hennington. Ms. Hennington remains the head of the Wyly family office today. Her husband, Keith Hennington, has served as the family's tax adviser. The family office has employed other staff as well.

The family office handled a variety of matters for the Wyls, including answering telephones, handling correspondence, opening and administering bank and securities accounts, overseeing financial transactions, administering transactional paperwork, managing property, tracking Wyly domestic and offshore assets, and preparing financial reports. The family office interacted directly with the legal counsel and financial institutions used by the Wyly family. In 1995, the Wyly family office began working with the newly-formed Irish Trust Company to handle Wyly-related offshore transactions. The Irish Trust Company was characterized by Ms. Robertson as the "offshore family office."<sup>482</sup> From its inception to the present, the Irish Trust Company has been headed by Michelle Boucher.<sup>483</sup> At first Ms. Boucher reported to Ms. Robertson.<sup>484</sup> When Ms. Hennington became head of the Wyly family office, Ms. Hennington and Ms. Boucher worked together to track and manage Wyly assets in the United States and offshore.<sup>485</sup>

## (2) Offshore Facilitators

**Offshore Service Providers.** Offshore service providers in the Isle of Man (IOM) and the Cayman Islands provided key services to the

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<sup>481</sup> *Id.* Ms. Robertson told the Subcommittee that she worked for the Wyly family from 1979 to 1998 or 1999, keeping the books for individual family members, among other duties. In the mid-1980s, she became head of the Wyly family office. In 1993, she began working part-time for Maverick. In 1998 or 1999, she ended her employment with the Wyly family office and became a full-time Maverick employee and continues to work there full time as the Chief Financial Officer.

<sup>482</sup> 8/7/98 fax from Ms. Robertson to Sam and Charles Wyly and others (PSI\_ED00073787-93, at 90).

<sup>483</sup> Ms. Boucher is a Chartered Accountant and has held the titles of Chief Financial Officer and Money Laundering Reporting Officer at the Irish Trust Company since its inception. 11/5/04 letter from Ms. Boucher to Bank of America (BA148314-15).

<sup>484</sup> *Id.*; Subcommittee interview of Ms. Robertson (3/9/06).

<sup>485</sup> Subcommittee interviews of Ms. Robertson (3/9/06) and Ms. Hennington (4/26/06) .

Wyly-related offshore entities. The IOM offshore service providers established the 19 Wyly-related trusts and the 39 IOM corporations they owned; provided trustees for the IOM trusts; provided nominee directors and officers for the IOM corporations; administered the paperwork required by IOM law; and supplied the documentation and authorizations needed for particular transactions undertaken by specific offshore entities. These IOM service providers were the lynchpin in the Wyly offshore structure, since they administered the key offshore entities and were instrumental in representing that the offshore trusts and corporations were independent of Wyly control, while at the same time implementing Wyly decisions on trust assets and investment activities.

During the 13-year period examined in this Report, eight IOM offshore service providers helped administer one or more of the Wyly-related IOM entities.<sup>486</sup> The most active were IFG International, Inc. (IFG),<sup>487</sup> Lorne House Trust Company Ltd. (Lorne House), Trident Trust Company (IOM) Ltd. (Trident), and Wychwood Trust Ltd. (Wychwood). The documents reviewed by the Subcommittee show that these offshore service providers interacted primarily with four persons representing Wyly interests, Ms. Boucher, Mr. French, Ms. Hennington, and Ms. Robertson. Several also, on occasion, communicated directly with Wyly family members, including Sam and Charles Wyly.

**Irish Trust Company.** The key offshore service provider in the Cayman Islands was the Irish Trust Company, which has been referred to as the “offshore family office.”<sup>488</sup> Unlike the IOM offshore service providers, whose ownership was completely independent of the Wyls, the Irish Trust Company was wholly owned by Irish Holdings Ltd., which in turn was owned by the Bessie and Tyler Trusts, two Wyly-related trusts.<sup>489</sup>

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<sup>486</sup> For a complete list, see Appendix 2.

<sup>487</sup> IFG owned a subsidiary called Aundyr Trust Company Ltd., which often appears in the documentation. See, e.g., 12/12/95 fax from Aundyr to Lehman Brothers (CC020030)(“Aundyr Trust Company Limited is a wholly owned subsidiary of IFG International Limited.”).

<sup>488</sup> Both Irish Trust Company and Ms. Boucher declined the Subcommittee’s request for an interview and provided no information to the Subcommittee. Information about them is, thus, taken from documents produced by others to the Subcommittee and from interviews provided by other persons.

<sup>489</sup> See “The Irish Trust Company (Cayman) Ltd. Application for a Restricted Trust License” (PSI00120946-52). This application states that the company was also owned by the South Madison Trust, an Isle of Man trust benefitting Mr. French. Mr. French, however, told the Subcommittee that he did not believe this trust ever had any ownership interest in the Irish Trust Company. Subcommittee interview of Mr. French (4/21/06).



Established in 1995, Irish Trust Company handled a variety of offshore tasks for the Wyly-related offshore entities. For example, it handled paperwork and administrative tasks for the Wyly-related offshore entities, six Cayman limited liability corporations (LLCs) associated with Sam Wyly's six children, and the two Wyly-related hedge funds, Maverick and Ranger, that had offshore components. It kept detailed financial records for the Wyly-related offshore entities, tracking their expenditures, securities transactions, bank transactions, assets, and liabilities, and producing financial reports both for the entities and the Wyly family office. It also became the key liaison between the offshore entities and the Wyly family office in the United States, relaying information, advancing paperwork, and often offering suggestions on how offshore transactions should be structured, which offshore account should supply needed funds, and when offshore dollars were available to be sent to the United States.

The head of the Irish Trust Company from its inception to the present day has been Michelle L. Boucher, a Canadian citizen and Cayman resident.<sup>490</sup> Ms. Boucher is a chartered accountant. The documents obtained by the Subcommittee show that, since her employment in 1995, Ms. Boucher was in frequent contact with the Wyly representatives in Dallas and with the broker, Mr. Schaufele, who handled securities transactions for the offshore entities.<sup>491</sup> She helped design and execute numerous financial transactions involving Wyly-related offshore assets, directed the movement of millions of offshore dollars to Wyly-related accounts in the United States, and helped produce numerous financial statements tracking Wyly offshore assets. Beginning in 2001, Ms. Boucher became a trust protector for all the Wyly-related offshore trusts, replacing Mr. French and assuming this responsibility at the same time Ms. Robertson was reducing her day-to-day interactions with the offshore entities. After Ms. Robertson resigned from her trust protector positions in 2004, Ms. Boucher became and remains today the sole trust protector of all of the Wyly-related offshore trusts.

In addition to her posts as head of Irish Trust Company and trust protector, Ms. Boucher has served as the Money Laundering Reporting Official, a position required under Cayman law, for the Maverick and

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<sup>490</sup> 11/5/04 letter from Ms. Boucher to Bank of America (BA148314-15)(hereinafter "Boucher letter"). Ms. Boucher is also the Money Laundering Reporting Officer for the Irish Trust Company, a post required under Cayman law. *Id.*

<sup>491</sup> *Id.* ("I personally have had a 10 year relationship with Mr. Lou Schaufele and enjoy working with him and his team immensely.").

Ranger hedge funds organized in that country.<sup>492</sup> For a five-month period from 1998 to 1999, she also served as the chief financial officer of Scottish Annuity & Life Holdings, Ltd.<sup>493</sup>

**Offshore Financial Institutions.** Another key set of offshore facilitators were the financial institutions that opened accounts for the Wyly-related offshore entities.

One of the most important was Queensgate Bank & Trust Company Ltd. (Queensgate Bank), a small offshore bank organized in the Cayman Islands. It apparently began operations in 1990, and is licensed by the Cayman Islands to form trusts and corporations.<sup>494</sup> Although this bank refused to cooperate with the Subcommittee investigation, information obtained from other sources indicate that it has between 10 and 24 employees, and operates out of the Ugland House, a building that apparently is the official address for thousands of Cayman companies.<sup>495</sup> The majority owners of Queensgate Bank are apparently members of the Ugland family.<sup>496</sup> The managing director of Queensgate Bank is John Dennis Hunter, a British national and Cayman resident who has apparently held this position since 1993; the vice chairman of the board is Francis O. Flannigan, an Irish national.<sup>497</sup>

Queensgate Bank opened accounts for a number of Wyly-related offshore entities, including Irish Holdings, Irish Trust Company, Scottish Holdings, Scottish Annuity Company, the Maverick and Ranger offshore funds, the six Cayman LLCs associated with Sam Wyly's six

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<sup>492</sup> *Id.*; information provided to the Subcommittee by Maverick and Ranger.

<sup>493</sup> See 11/5/04 Boucher letter; 4/18/00 "Scottish Re: Presentation to the Permanent Subcommittee on Investigations" at 48, 55.

<sup>494</sup> See 6/15/90 Queensgate Bank memorandum and articles of incorporation (W000666-96); 9/25/90 Queensgate offshore banking license (W000662). Queensgate Bank declined the Subcommittee's request for an interview.

<sup>495</sup> See, e.g., 9/26/02 Webster Bank account application completed by Queensgate Bank (W000001-3)(stating Queensgate has 10-24 employees, and providing Ugland House address); "The Irish Trust Company (Cayman) Ltd. Application for a Restricted Trust License," (PSI00120946-52)(stating Queensgate Bank has offices at Ugland House); Congressional Record, 109th Cong., 2nd sess., (2/1/06) at S408 (Senator Dorgan speaking)("According to Bloomberg News, [Ugland House] is the official address of 12,748 companies.").

<sup>496</sup> See 2/3/05 Webster Bank form, "Certification regarding correspondent accounts for foreign banks," completed by Queensgate Bank (W000707-12)(listing bank's owners as Queensgate Group Ltd., Andreas Ugland and Sons Ltd., Andreas Ugland, and Knut Axel Ugland). The Ugland family is based in Norway.

<sup>497</sup> See Bankers Almanac entry for Queensgate; PSI\_ED00010432; 12/12/95 fax from Ms. Boucher to Mr. Buchanan (PSI00118184); "The Irish Trust Company (Cayman) Ltd. Application for a Restricted Trust License," at 2 (PSI00120947).

children, First Dallas International Ltd., and many of the Isle of Man trusts and corporations examined in this Report. Queensgate Bank also established and administered a special purpose vehicle, Security Capital Ltd., that transferred millions of offshore dollars into the United States using pass-through loans.<sup>498</sup> At least four Queensgate employees, Mr. Hunter, Karla Bodden, Blair Gauld, and Jane Fleming, served as nominee directors of Security Capital. Mr. Hunter, Mr. Flannigan, and Ms. Bodden have also served as nominee directors of other Wyly-related offshore entities.<sup>499</sup>

Queensgate Bank was able to transfer funds into the United States using correspondent accounts it had opened at Webster Bank in Connecticut, and IBJ Whitehall Bank & Trust Company in New York.<sup>500</sup> Queensgate Bank even subleased office space to Irish Trust Company in the Uglan House, becoming not only the company's bank, but also its landlord.<sup>501</sup>

Another key financial institution was Bank of Bermuda (IOM) Ltd., a bank and trust company that opened accounts and transferred funds across international lines for multiple Wyly-related offshore entities. This bank was affiliated with a number of other Bank of Bermuda entities operating in other countries, including the Cayman Islands and the United States.<sup>502</sup> The Bank of Bermuda apparently continues to administer accounts for the Wyly-related offshore entities today.

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<sup>498</sup> For more information about Security Capital, see Report section on Bringing Offshore Dollars Back with Pass-Through Loans, below.

<sup>499</sup> Ms. Bodden, for example, has served as a director of the Edinburgh Fund (PSI00103836), and Irish Trust Company (BA055846), while Mr. Hunter has served as a director of EB&M Holdings (BA060745), the Edinburgh Fund (PSI00103836), Irish Trust Company (BA055846), Maverick Fund (PSI00118184), Ranger Fund Ltd. and Ranger Fund LLC (PSI\_ED00010432), and Scottish Annuity (PSI00118184).

<sup>500</sup> IBJ Whitehall Bank & Trust Company was purchased, in 2002, by Mizuho Bank, which produced the documents related to Queensgate Bank's correspondent account. Mizuho Bank recently sold a part of the IBJ portfolio of accounts, including the Queensgate Bank account, to Webster Bank. Webster Bank told the Subcommittee that it closed the Queensgate Bank correspondent account in November 2005.

<sup>501</sup> See "The Irish Trust Company (Cayman) Ltd. Application for a Restricted Trust License," at 1, 3 (PSI00120946, 48); 7/24/96 email from Ms. Boucher to Amber Gibson (PSI00101306) ("Dinner – Edouardo's Restaurant ... we are taking out Dennis Hunter and Karla Bodden of Queensgate Bank & Trust (our offshore directors and landlords!)").

<sup>502</sup> According to its website, in February 2004, Bank of Bermuda joined the HSBC Group, a global bank currently operating in 77 countries. See [www.bankofbermuda.com](http://www.bankofbermuda.com). See also Bankers Almanac entries for Bank of Bermuda (IOM) Ltd., Bank of Bermuda Ltd., Bank of Bermuda (Cayman) Ltd., and Bank of Bermuda (New York) Ltd.

**Offshore Legal Counsel.** Another offshore facilitator that advanced Wyly-related offshore interests was Maples & Calder, one of the largest law firms in the Cayman Islands and a specialist in offshore legal issues. Like Queensgate Bank, it has offices in the Ugland House. The managing partner is Gus Pope, and one key law partner who handled Wyly-related matters is Henry Smith. Maples & Calder helped draft paperwork and provided legal advice to establish a host of Wyly-related Cayman entities, including Irish Holdings, Irish Trust Company, Scottish Holdings, Scottish Annuity Company, Maverick and Ranger's offshore funds, First Dallas International, Michelangelo Investors, and Edinburgh Fund Ltd.<sup>503</sup> It has also provided legal advice to Queensgate Bank.<sup>504</sup>

#### F. Overview of Wyly Offshore Operations

The Wyly offshore operations grew in size and complexity over time, eventually encompassing 58 offshore trusts and corporations. Key developments, many of which are discussed in more detail in Report sections below, can be summarized as follows.

**Initial Move Offshore in 1992.** In March 1992, following a plan devised by legal counsel, the Wyls established their first set of offshore trusts, called the Bulldog, Pitkin, and Tallulah International Trusts.<sup>505</sup> Using an Isle of Man service provider, Lorne House, Sam Wyly settled the Bulldog Trust and the Tallulah International Trust as two irrevocable trusts. The beneficiaries of these trusts were two foreign charities, the British Red Cross and the Community Chest of Hong Kong, as well as Sam Wyly's children. Charles Wyly settled the Pitkin Trust, an irrevocable trust whose beneficiaries were the same two foreign charities

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<sup>503</sup> See, e.g., documents related to Irish Trust (PSI\_ED00065884-89, PSI00117419; PSI00120948), Maverick (PSI00119286, PSI00120570-74, PSI00136390); 12/02 Ranger Investments Private Placement Memorandum for Ranger Hedged Equity (offshore), Ltd. (PSI\_ED00039145-205, at 152); Scottish Annuity & Life Holdings (SCREPSI014197-99, SCREPSI014238); Scottish Life Holdings (SCREPSI011573-77); Scottish Annuity Company (Caymans)(SCREPSI011573); First Dallas International (PSI00110281); Michelangelo Investors (Subcommittee interview of Maples & Calder, 7/12/06); and Edinburgh Fund Ltd. (PSI00103848).

<sup>504</sup> 3/23/06 letter from Maples & Calder to the Subcommittee.

<sup>505</sup> A complete list of the offshore trusts, the corporations they owned, and the offshore service providers that administered them are included in Appendices 1-3 to this report.

as well as his children.<sup>506</sup> All three trust agreements had virtually identical terms.

In December 1992, three more trusts were established, the Castle Creek, Delhi, and Lake Providence International Trusts. These trusts differed from the earlier trusts, but were virtually identical to each other. Again, two were settled by Sam Wyly and one by Charles Wyly. The beneficiaries of both the Delhi and Lake Providence International Trusts were the same two foreign charities and Sam Wyly's children. The beneficiaries of the Castle Creek International Trust were the same two foreign charities and Charles Wyly's children.

All but one of the 1992 trusts formed wholly-owned IOM corporations. Many of these offshore entities opened bank accounts at Queensgate Bank or Bank of Bermuda (IOM); some also opened U.S. securities accounts at CSFB.<sup>507</sup> As explained more fully below, the Wyllys used a series of stock option-annuity swaps to transfer nearly 3 million Michaels and Sterling Software stock options and warrants to ten of the trust-owned corporations. Over time, the offshore corporations exercised these stock options, obtained shares, transferred some of the shares to other Wyly-related entities, used some to obtain loans or engage in securities transactions, and sold still others on the public market to generate cash.

**Second Set of Offshore Transfers in 1994-95.** In 1994 and 1995, five more IOM trusts were established. In contrast to the 1992 trusts, none of these trusts was settled by Sam or Charles Wyly. Instead, on the advice of counsel to obtain more favorable tax treatment, all were settled by non-U.S. persons and characterized as "foreign grantor trusts."<sup>508</sup> These trusts were settled by either Keith L. King or Shaun F. Cairns, both of whom are non-U.S. citizens and were then IOM residents. Mr.

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<sup>506</sup> The trust agreements made the Wyly children ineligible for any trust benefit "[u]ntil the second anniversary of the death of the Settlor," apparently in an effort to prevent the trust from being considered a U.S. grantor trust with U.S. beneficiaries. See, e.g., Bulldog Trust Agreement (PSI00007383) and Pitkin Trust Agreement (PSI00009208).

<sup>507</sup> See CSFB list of accounts (CSFB0015938-41).

<sup>508</sup> Foreign grantor trusts are trusts whose settlors are non-U.S. persons. See 26 U.S.C. §§ 671-679 of the Internal Revenue Code ("IRC") (addressing foreign trusts).

King was then a director of Lorne House,<sup>509</sup> while Mr. Cairns was a director of Wychwood.<sup>510</sup>

In February 1994, acting through Lorne House, Mr. King established two of the foreign grantor trusts, the Bessie and Tyler Trusts, with virtually identical terms. One benefitted Sam Wyly's family, and the other benefitted the family of Charles Wyly. The Bessie Trust's named beneficiaries were Mr. King, Sam Wyly, and Sam Wyly's wife and children; while the Tyler Trust's named beneficiaries were Mr. King, Charles Wyly, and Charles' wife and children.<sup>511</sup>

In 1995, acting through Wychwood, Mr. Cairns established three more foreign grantor trusts, the Plaquemines, LaFourche, and Red Mountain Trusts. The Plaquemines Trust was formed in February 1995. Unique among the Wyly-related offshore trusts, it was settled by another trust, the 1992 Bulldog Trust. Its named beneficiaries were the same two foreign charities specified in the December 1992 trusts and Sam Wyly's children. Soon after, the Bulldog Trust transferred two of the corporations it owned to the Plaquemines Trust. A few months later, in July 1995, Mr. Cairns acted as grantor to form the LaFourche Trust, whose beneficiaries were Sam Wyly and his wife and children; and the Red Mountain Trust, whose beneficiaries were Charles Wyly and his wife and his children. Each of the 1994 and 1995 trusts formed one or more wholly-owned IOM corporations. Some of the trusts and their corporations opened accounts at Queensgate Bank or Bank of Bermuda. A few opened accounts at CSFB.

In 1996, relying on advice from legal counsel, the Wyls engaged in a second round of stock option-annuity swaps, involving Michaels, Sterling Software, and Sterling Commerce shares. To carry out these transactions, six additional IOM trusts were briefly established in late 1995 or early 1996, all of which were settled by either Sam or Charles Wyly. Three of the new trusts, Arlington Trust, Crazy Horse Trust, and Sitting Bull Trust, and the pre-existing Tallulah International Trust, took possession of stock options originally granted to Sam Wyly. Three of the new trusts, the Lincoln Creek, Maroon Creek, and Woody

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<sup>509</sup> "The Irish Trust Company (Cayman) Ltd. Application for a Restricted Trust License," at 3 (PSI00120948); Subcommittee interview of Ms. Robertson (3/9/06). In 1995, Mr. King was the subject of disciplinary proceedings and banned from practice in the Isle of Man. See, e.g., 12/5/95 letter from Isle of Man Financial Supervision Commission to Mr. Keith Leslie King (00148-55).

<sup>510</sup> Subcommittee interview of Ms. Robertson (3/9/06).

<sup>511</sup> Also in 1994, Mr. King established a foreign grantor trust for Michael French, called the South Madison Trust, whose beneficiaries were Mr. King, Mr. French, and Mr. French's wife and children. See trust agreement (2/2/94)(F000130-85).

International Trusts, took possession of stock options originally granted to Charles Wyly. As explained more fully below, the trusts transferred the stock options to ten other Wyly-related offshore corporations in exchange for annuity agreements. By the end of 1996, all of the trusts that had participated in the 1996 stock option-annuity swaps were terminated. They distributed their assets, including the annuity agreements, to either Sam or Charles Wyly. As before, over time, the offshore corporations exercised some of the stock options, obtained company shares, transferred some shares to other Wyly-related entities, engaged in various securities transactions, and sold some shares on the public market to generate cash.

In addition, in 1996, five Wyly-related offshore corporations bought Michaels stock in private transactions with Michaels Stores. The first of these private stock sales took place in April 1996, when three of the offshore corporations purchased a total of 2 million Michaels shares for \$25 million.<sup>512</sup> In December 1996, the two other corporations purchased options to buy another 2 million shares, and in February 1997, exercised those options and bought the shares for a total of \$20 million.<sup>513</sup> These private stock sales injected a total of \$45 million in offshore dollars into Michaels Stores at a time when the stock price was low and financial analysts were criticizing the company for insufficient capital.<sup>514</sup>

**Offshore Support of Wyly Interests.** Beginning in 1993, the Wyly-related offshore entities began spending offshore dollars to advance Wyly-related business and personal interests. For example, several offshore entities deposited millions of dollars in the Maverick offshore funds that opened for business in 1993. In 1994, two of the trusts, the Lake Providence and Castle Creek International Trusts, purchased annuity policies from Scottish Annuity (Cayman) Ltd. and provided millions of dollars in annuity assets, which Scottish deposited in Maverick offshore funds for further investment. In 1995, the Bessie and Tyler trusts formed Irish Holdings, and the Wyly offshore entities began using Irish Trust Company's administrative services, as did the Maverick offshore funds. In 1997, several offshore entities began

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<sup>512</sup> See Michaels Stores Inc. 10-K filing (5/2/97); 3/29/96 stock purchase agreement between Michaels and Locke (PSI00062993-3010); 3/29/96 stock purchase agreement between Michaels and Quayle (PSI00063011-28).

<sup>513</sup> See Michaels Stores Inc. 10-K filing (5/2/97); 12/23/96 option agreement between Michaels and Devotion (PSI00062959-74); 12/23/96 option agreement between Michaels and Elegance (PSI00085007-22).

<sup>514</sup> See, e.g., "Michaels Stores Turns To Chairman Again for Infusion of Cash," Wall Street Journal (1/7/97).

investing funds in Green Mountain, an energy company acquired by the Wyllys that year.

In 1998, Queensgate Bank established a Cayman offshore corporation, Security Capital Ltd., to facilitate pass-through loan transactions between Wyly-related persons and entities. In essence, a Wyly-related offshore corporation loaned funds or other financial assets to Security Capital which loaned the same amount of funds or assets to a Wyly-related person or entity, usually in the United States. Over a five-year period, from 1998 to 2003, Security Capital participated in at least ten of these pass-through loans, providing about \$140 million in cash and other financial assets to advance Sam and Charles Wyly's personal and business interests. Also in 1998, the Wyly-related offshore insurance company went public as Scottish Annuity & Life Holdings Ltd. In 1999, as explained in more detail later, due to defects in the trust agreement, the trustees of the Plaquemines Trust voided the trust and reappointed its assets to its grantor, the Bulldog Trust.

In 2000, Charles Wyly established a private investment fund called First Dallas, with an offshore component, First Dallas International. In 2001, Sam Wyly established another hedge fund, Ranger, in addition to Maverick. The Wyly-related offshore entities promptly transferred millions of offshore dollars to both First Dallas and Ranger.

**Third Set of Offshore Transfers.** Beginning in 1999, a third set of Wyly stock options were transferred offshore. In the summer of 1999, Sam and Charles Wyly decided to sell Sterling Software and Sterling Commerce. In September 1999, Sam and Charles transferred substantial Sterling Software and Sterling Commerce stock options to five Wyly-related offshore corporations in exchange for cash totaling about \$27 million. In March 2000, both Sterling Software and Sterling Commerce were sold in separate \$4 billion transactions. SBC Communications, the company that bought Sterling Commerce, paid cash for all outstanding stock options, including \$74 million for the stock options held by the Wyly-related offshore corporations. Computer Associates, the company that bought Sterling Software, exchanged outstanding Sterling Software stock options for a smaller number of Computer Associates options. In July 2002, Sam and Charles Wyly transferred a substantial number of Computer Associates stock options (equivalent to about 1.5 million Sterling Software stock options) to two more of the offshore corporations they controlled in exchange for cash totaling about \$4 million.

**Two More Trusts.** In October 2000, two more Wyly-related offshore trusts were established, although both trusts were later voided.



The first, Bulldog II Trust, was settled by Sam Wyly, and the original Bulldog Trust was immediately merged into it. Two more trusts, the Delhi and Lake Providence International Trusts, were merged into the Bulldog II Trust in 2001. Three years later, in 2004, the trustees determined that the Bulldog II Trust may have created unintended U.S. tax liabilities, voided it, and purported to reconstitute the original Bulldog, Delhi and Lake Providence Trusts as if the mergers had never taken place. A similar set of events befell the Pitkin Trust II. This new trust was established in 2000, with Charles Wyly as the grantor, and the original Pitkin Trust was immediately merged into it. In 2001, the Castle Creek International Trust was also merged into it. In 2004, the Pitkin Trust II was voided by the trustees who purported to reconstitute the original Pitkin and Castle Creek trusts as if they had never been merged.

**Sub Funds.** In 2001, with the advice of counsel, Sam Wyly decided to create “sub funds” within the Bessie Trust, so that each of his six children would have an individual “sub fund” of designated assets within this trust. To carry out this decision, the Bessie Trust formed six Cayman limited liability corporations (LLCs), each of which was associated with one of Sam Wyly’s children and each of which was intended to hold the assets designated for that child. Ms. Boucher, working with counsel, devised a detailed plan to assign assets to the six sub funds, to be held in the name of the corresponding Cayman LLCs. Following this plan, in June 2001, several of the Wyly-related corporations owned by Bulldog Trust loaned the specified assets to Greenbriar Ltd., owned by the Delhi International Trust, which then loaned those and additional assets of its own to Security Capital in exchange for a \$56 million promissory note. Security Capital, in turn, loaned the assets to the Cayman LLCs in exchange for promissory notes from each LLC that added up to the same amount. The end result was that the specified assets had moved from the IOM corporations and the Bulldog and Delhi trusts to the six Cayman LLCs and the Bessie Trust.

**Real Estate, Furnishings, Artwork, and Jewelry.** From 1999 to 2004, about \$85 million in offshore dollars was transferred to accounts in the United States and used to purchase U.S. real estate, construct houses for the personal use of Wyly family members, and operate those properties, known as Rosemary’s Circle R Ranch, LL Ranch, Cottonwood Galleries, Stargate Horse Farm, and 36 Malibu Colony. In addition, nearly \$30 million in offshore dollars were transferred to purchase furnishings, artwork, and jewelry used by members of the Wyly family. The real estate transactions were accomplished through the establishment of additional offshore and domestic entities that added further layers of complexity to the Wyly offshore structure.

**Annuity Payments.** The first payment under the 1992 and 1996 annuity agreements was made in 2003, more than ten years after the Wyls first moved their stock option compensation offshore. To date, about \$35 million in annuity payments have been made to Sam Wyly, Charles Wyly, and Charles Wyly's wife. In November 2005, an annuity payment was missed. One of the offshore corporations, Roaring Creek Ltd., which is owned by Pitkin Trust, was supposed to pay about \$1.1 million to Charles Wyly. To date, this payment has not been made.

By the end of 2005, 58 Wyly-related offshore entities had been created, including 19 offshore trusts and 39 offshore corporations. Over 17 million stock options and warrants representing at least \$190 million in compensation provided to Sam and Charles Wyly had been moved offshore. Over the following years, about \$140 million in loans and more than \$600 million in untaxed offshore dollars were spent to advance Wyly-related personal and business interests, primarily in the United States. About \$124 million in stock option compensation remains offshore and untaxed. Additional untaxed capital gains also remain offshore.<sup>515</sup>

## **G. Detailed Examination of Wyly Offshore Operations**

The following Report sections provide an indepth examination of the functioning of the Wyly offshore structure.

### **(1) Directing Trust Assets**

Sam and Charles Wyly sent their stock options and warrants offshore to an array of offshore trusts and corporations that grew in number and complexity over time. The evidence shows that, in doing so, the Wyly brothers did not simply hand over the securities and cede direction over them to the offshore trustees. Instead, over the years, they continued to make decisions about how and when the stock options and warrants should be exercised, how and when the resulting shares should be sold or used in other securities transactions, and what should be done with the investment gains. The Wyls and their representatives typically conveyed decisions about the trust assets to individuals named in the trust agreements as "trust protectors," whom the Wyls had selected. The trust protectors then typically conveyed these decisions, worded as

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<sup>515</sup> For more information on how the \$190 million was calculated, see the Report section on Transferring Assets Offshore, footnote 746. For more information on how the \$600 million was calculated, see the Report sections on Supplying Offshore Dollars to Wyly Business Ventures (about \$500 million), Funneling Offshore Dollars Through Real Estate (about \$85 million), and Spending Offshore Dollars on Artwork, Furnishings, and Jewelry (about \$30 million).

“recommendations,” to the offshore trustees who, in form under Isle of Man law retained final decisionmaking authority over the trust assets, but in practice simply carried out the directions they received.

Over the thirteen years examined by the Subcommittee, the offshore trustees rarely questioned any “recommendation” made by a Wyly trust protector and typically implemented a recommendation within days of receiving it.<sup>516</sup> The Subcommittee saw no evidence that the offshore trustees initiated or implemented financial transactions or investments on their own involving assets from a Wyly-related offshore trust. Instead, the offshore trustees appear to have functioned as mere administrative cogs carrying out decisions made by the Wyls and their representatives regarding trust assets and investment activities. At the same time, the offshore trustees continued to represent that the offshore trusts and the corporations they owned were independent entities free of Wyly control.

#### **(a) Background on Trusts**

Trusts are established for a variety of reasons, including by persons seeking to provide for the economic security of family members, manage their estates, or fund charitable works to benefit the public. A trust is created when one person, called the grantor or settlor, conveys a property interest to another person, called the trustee, to be held for the benefit of a party called the beneficiary.<sup>517</sup> The grantor is the person who establishes the trust and typically contributes the trust assets. The trustee typically takes title to the assets and assumes a fiduciary obligation to exercise reasonable care over the property and to act solely in the interest of the beneficiary. The beneficiary can be a named individual, a charity, or a class of persons such as the grantor’s children. The grantor, in some circumstances, can also serve as the trustee or as one of the beneficiaries. The grantor can create a trust that is revocable or irrevocable. To establish the trust, the grantor, with the assistance of legal counsel, typically executes a written trust agreement identifying the trustee, the beneficiaries, the initial trust assets, and the terms of the trust.

Under U.S. trust law, grantors can retain significant control over assets conveyed to a trust. For example, the trust agreement can authorize the grantor to manage the trust assets or direct the trustee’s

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<sup>516</sup> Because none of the offshore service providers supplied documentation or interviews to the Subcommittee, this analysis is necessarily based on information provided by other parties.

<sup>517</sup> For more information, see, e.g., G. Bogert, The Law of Trusts and Trustees, (Thomson/West Group, 3<sup>rd</sup> ed., 2005), Chapter 1.

performance of certain duties, or require the trustee to obtain the grantor's written consent prior to taking certain actions.<sup>518</sup> Grantors can spend trust funds, replace the trustee, and reserve the right to revoke the trust altogether. Foreign jurisdictions afford grantors similar authority over trust assets. The Isle of Man, for example, which plays a key role in the Wyly case history, allows grantors to establish trusts giving the trustee wide discretion to invest and distribute trust assets. The grantor may then converse directly with the trustee or provide a "letter of wishes" with specific recommendations on how to administer the trust assets.

A trust agreement can also establish a "trust protector," a person selected by the grantor with authority to oversee the trust assets and often with the power to replace the trustee. The Isle of Man permits trust protectors to interact with trustees on a daily basis, conveying information and recommendations from the grantor about how the trust assets should be handled, and to replace the trustees at will, including, for example, if a trustee declines to follow the protector's recommendations.<sup>519</sup> At the same time, trust law typically assigns final decisionmaking authority over trust assets to the trustee, requiring the trustee to act with due care and in the sole interest of the trust beneficiaries.

U.S. tax treatment of trust property depends upon the amount of control the grantor retains over the trust. If the grantor places property in an irrevocable trust and gives up all control over the property and the trust, the trust is generally treated as a separate taxpayer and pays tax on the income from the property.<sup>520</sup> When the trust distributes the income to the beneficiaries, it gets a deduction for the amount distributed, but the beneficiaries have to pay tax on the income, so that the income is taxed only once.<sup>521</sup> On the other hand, if the grantor directly or indirectly keeps the power to revoke the trust or retains significant

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<sup>518</sup> *Id.* at Chapter 6, Section 104, "Reservation by Settlor of Powers of Management."

<sup>519</sup> IOM trust law does not explicitly address the position of trust protector or define its authority, but trust protectors are in common use within the jurisdiction and are accepted as valid trust participants by the IOM Financial Supervision Commission that oversees trust operations. In the United States, trust protectors are not common. See, e.g., 9/22/00 email from Ms. Hennington to Evan Wyly (PSI\_ED00005014-15) ("There is really no such thing as a protector in the domestic world."). In recent years, however, a handful of states have enacted legislation that authorizes trust protectors to participate in U.S. trusts. See Alaska Stat. § 13.36.370 (2006); Idaho Code § 15-7-501 (2006); N.C. Gen. Stat. § 36C-8-808 (2006); S.C. Code Ann. § 62-7-808 (2005); S.D. Codified Laws § 55-1B-1 (2006); Tenn. Code Ann. § 35-15-808 (2005).

<sup>520</sup> 26 U.S.C. §§ 641(a) and (b).

<sup>521</sup> 26 U.S.C. §§ 651, 652, 661 and 662. If a trust distributes a portion of the original trust assets, sometimes referred to as the trust principal, those distributions are not taxed.

control over the trust or trust assets, the trust is considered a “grantor trust” and its income is generally attributed to the grantor for tax purposes.<sup>522</sup> In some cases where a grantor has supposedly established an irrevocable, independent trust, but secretly retained control over the trusts assets, courts have ruled that the trust was a sham and attributed the trust assets and income to the grantor for tax purposes.<sup>523</sup>

Trusts formed in foreign jurisdictions originally operated under a different set of tax rules. Generally, foreign trusts were seen as foreign entities outside the normal reach of U.S. tax law, and foreign trust distributions to U.S. persons were generally untaxed. Over the years, some U.S. citizens began to take advantage of the tax status of these foreign trusts. For example, some U.S. persons formed foreign trusts in tax havens, named themselves as the grantor, named U.S. beneficiaries, and placed U.S. assets in those trusts. They claimed that the foreign trusts could then distribute the trust income to the U.S. beneficiaries tax free, and the trusts could accumulate capital gains tax free, unless and until any appreciated assets were brought back into the United States. Congress and the IRS responded with a series of laws and regulations designed to stop what were seen as tax dodges unintended by the tax code. In 1976, for example, Congress declared that a foreign trust that was funded by a U.S. person and had U.S. beneficiaries was considered a U.S. grantor trust whose income had to be attributed to the U.S. person who transferred the assets.<sup>524</sup>

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<sup>522</sup> 26 U.S.C. §§ 671-678. See also Holdeen v. United States, 297 F.2d 886 (2d Cir. 1961)(use of trust assets to benefit of the grantor); Wiles v. Commissioner, 59 T.C. 289 (1972), aff’d, 491 F.2d 1406 (5th Cir. 1974)(trust’s payment of the grantor’s debts); Bixby v. Commissioner, 58 T.C. 757 (1972)(ability to replace trustee and control of investments through a related “advisory committee”). These provisions of the tax code apply both to the grantor and other persons who may be deemed an “owner” of trust assets because, for example, they contributed the trust assets and exercised control over them. See, e.g., 26 U.S.C. § 678.

<sup>523</sup> See, e.g., Zmuda v. Commissioner, 731 F.2d 1417 (9th Cir. 1984); Dahlstrom v. Commissioner, T.C. Memo. 1991-264; Markosian v. Commissioner, 73 T.C. 1235 (1980); Muhich v. Commissioner, T.C. Memo. 1999-192.

<sup>524</sup> See the Tax Reform Act of 1976, 26 U.S.C. § 679(a). The U.S. Senate Finance Committee stated in its report on the new legislation that, under the then existing law, foreign trusts “generally pay no income tax anywhere in the world,” that allowing “tax-free accumulation of income” in foreign trusts was “inappropriate,” and that such practices provided an “unwarranted advantage” to foreign trusts over domestic trusts. The Committee saw the problem as compounded where U.S. persons funded a foreign trust with appreciated property using transactions that purported to avoid the payment of any capital gains tax on the appreciated assets transferred to the foreign trust. Section 679 of the tax code, enacted as part of the 1976 Act, provided generally that where a U.S. person directly or indirectly transferred property to a foreign trust, without reporting gain on the transfer, the income of the foreign trust was taxable to the transferor if the trust had any U.S. beneficiary. This provision essentially treated the trust as a grantor trust whether or not the transferor retained any power or interest over the trust. S. Rept. No. 94-938, “Tax Reform Act of 1976,” pp. 216-219 (6/10/76). In addition, the 1976 Act tightened the rules designed to prevent U.S. taxpayers from using foreign trusts to escape capital gains tax on appreciated assets, by increasing the excise tax on assets transferred to a foreign

Some U.S. persons responded to these new limitations on foreign trusts by convincing a foreign person (rather than a U.S. person) to act as the grantor of the foreign trust and name U.S. beneficiaries. The U.S. person then transferred assets to this “foreign grantor trust” for later distribution to the U.S. beneficiaries tax free. In 1996, in effort to end this practice, Congress enacted legislation essentially requiring the U.S. beneficiaries to pay tax on any distributions from a foreign trust that was not already taxable to a U.S. grantor.<sup>525</sup> In passing this law, however, Congress applied it only to assets transferred to foreign trusts after February 6, 1995; foreign trusts funded with assets prior to that date were allowed to continue operating under earlier rules permitting tax-free distributions to U.S. beneficiaries.<sup>526</sup>

The Wyly case history, which spans a thirteen-year period from 1992 to 2005, reflects this legal tug of war over foreign trusts. The Wyllys created and funded some foreign trusts with U.S. grantors, such as the Bulldog and Pitkin Trusts, and other foreign trusts with foreign grantors, such as the Bessie and Tyler Trusts.<sup>527</sup> Some of the Wyly-related offshore trust agreements appear to have been written with the express goal of avoiding U.S. tax rules applicable to foreign trusts with U.S. beneficiaries by naming, for example, only foreign charities as the immediate trust beneficiaries and barring any “U.S. person” from receiving trust assets until two years after the death of the grantor, Sam or Charles Wyly.<sup>528</sup> The Wyly case history also illustrates the tensions between trust law, which often allows significant grantor control of trust assets, and U.S. tax and securities obligations which often turn on control issues. It illustrates further the tensions created by offshore

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trust and extending that excise tax to reach virtually all untaxed assets transferred by any means. 26 U.S.C. § 1491.

<sup>525</sup> This provision was included in the Small Business Job Protection Act of 1996. 26 U.S.C. § 672(f).

<sup>526</sup> The 1996 law also tightened the rules for taxing assets transferred to foreign trusts. In 1997, Congress enacted even tougher rules on transfers to foreign trusts, replacing an excise tax on assets transferred to foreign trusts with a rule requiring the immediate taxation of all appreciated assets transferred to a foreign trust. 26 U.S.C. § 684. The new law taxed the appreciated asset whether the transfer was direct, indirect, or constructive, and even in cases where no consideration was received.

<sup>527</sup> See Appendix 1, listing the offshore trusts, their grantors, and their beneficiaries.

<sup>528</sup> See, e.g., 1992 Castle Creek International Trust Agreement at 8 (PSI00009023)(“Until the second anniversary of the death of the Settlor no part of the Trust Fund, including the corpus or income comprising the Trust Fund may during any Taxable Year be paid to or accumulated for the benefit of any United States Person.”) and parallel provisions in the 1992 Bulldog Trust agreement (PSI00007383), 1992 Delhi International Trust agreement (PSI00009100), and 1992 Pitkin Trust agreement (PSI00009208).

secrecy laws that make it difficult to determine who really controls an offshore entity.

### **(b) Wyly Trust Agreements**

The trust agreements that established the 19 Wyly-related offshore trusts were documents intended to be interpreted using Isle of Man (IOM) law. Fourteen of the trusts identified Sam or Charles Wyly as the grantor; four identified a foreign individual, Keith King or Shaun Cairns, as the grantor; and one identified another trust as the grantor.<sup>529</sup> Each of the trust agreements named an IOM offshore service provider as the trustee, such as Lorne House, IFG, or Wychwood. Each of the agreements conferred upon the trustee broad discretion to manage and distribute the trust assets, indemnifying the trustee against any investment loss.<sup>530</sup> In some cases, the named beneficiaries were Wyly family members; in other cases, the named trust beneficiaries were foreign charities and persons named in an attached schedule. The persons named in the schedule were usually Wyly family members. Several of the trust agreements authorized the trustees to name additional beneficiaries, with the consent of the trust protectors.<sup>531</sup>

All of the trust agreements provided for the appointment of one or more “trust protectors.” Two types of provisions were used. In 1992, the trust agreements that formed the first two Wyly-related offshore trusts used identical provisions to establish a “Committee of Trust Protectors” with authority to appoint, remove, and replace the trustee, inspect trust records, and advise the trustee on any matter.<sup>532</sup> Other trust agreements contained similar provisions. The foreign grantor trusts established in 1994 and 1995, however, instead of establishing a

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<sup>529</sup> See Appendix 1.

<sup>530</sup> See, e.g., 1992 Bulldog Non-Grantor Trust Agreement at 8, 11-14 (PSI00007383, 86-89)(giving Trustee “sole and absolute discretion” regarding trust distributions and full discretionary authority to exercise a long list of powers); parallel provisions in the 1992 Pitkin Non-Grantor Trust Agreement (PSI00009208, 11-14).

<sup>531</sup> See, e.g., 1994 Bessie Trust Agreement, at Section 3 (PSI00008908-10)(“The Trustees shall have power at any time and from time to time with the prior written consent of the Protector by revocable or irrevocable instrument in writing executed within the Trust Period to appoint and direct that any person or class of persons not already included in the class of Beneficiaries shall thenceforth be included in such class ....”), and parallel provisions in the LaFourche Trust Agreement (PSI0009134-35), Maroon Creek Trust Agreement (PSI00009893-94), Red Mountain Trust Agreement (PSI00009239-40), and Tyler Trust Agreement (PSI00006997-99).

<sup>532</sup> 1992 Bulldog Non-Grantor Trust Agreement at 17-18 (PSI00007392-93) and 1992 Pitkin Non-Grantor Trust Agreement at 17-18 (PSI00009217-18)(“A Committee of Trust Protectors is hereby constituted to provide advice to the Trustee.”). Under the terms of these agreements, the Committee had to have at least one and not more than five members.

Committee, simply named specific individuals as the trust protectors. These individuals were given essentially the same authority as the Committee to replace the trustee, but the agreements did not otherwise describe their authority.<sup>533</sup>

### **(c) Wyly Trust Protectors**

During the thirteen years examined by this Report, three individuals, Michael French, Sharyl Robertson, and Michelle Boucher, served as the protectors overseeing the Wyly-related offshore trusts. During his tenure as trust protector, Mr. French also served as legal counsel to the Wyly family and acquired ownership interests in the Maverick hedge fund and Scottish Re insurance venture. Ms. Robertson simultaneously served as head of the Wyly family office and later as chief financial officer of Maverick. Ms. Boucher simultaneously served as the head of the Irish Trust Company that handled administrative matters and recordkeeping for the Wyly-related offshore entities. The Irish Trust Company is owned by the Bessie and Tyler Trusts associated with Sam and Charles Wyly. All three of the trust protectors were selected by the Wyllys. All three were trusted individuals in constant contact with Wyly family office personnel.

For the first nine years, from early 1992 until late 2000, Mr. French and Ms. Robertson served as the trust protectors for all of the Wyly-related offshore trusts. After Mr. French severed his relationship with the Wyly family in December 2000, he resigned from the protector positions, and was replaced in each instance by Ms. Boucher.<sup>534</sup> After Ms. Boucher's appointment, Ms. Robertson became less active, but did not formally resign from the protector positions until 2004.<sup>535</sup> Currently, Ms. Boucher is the sole protector overseeing the Wyly-related offshore trusts, having held that position for more than five years.

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<sup>533</sup> The offshore trust agreements that created a Committee of Trust Protectors include those establishing the Castle Creek International, Delhi International, Lake Providence International, Plaquemines, and Tallulah International Trusts. Trust agreements that named individual protectors include those establishing the Bessie, LaFourche, Red Mountain, and Tyler Trusts.

<sup>534</sup> See, e.g., 12/21/00 letter signed by Mr. French resigning from one of the trusts (PSI00059833); 12/26/00 email from Ms. Robertson to Ms. Boucher (PSI\_ED00072149) (stating that "Mike signed a document last week resigning as Protector of all Trusts" and asking Ms. Boucher to do the paperwork necessary to take his place). Earlier, Ms. Robertson had told Ms. Boucher that legal counsel had been advising her and Mr. French to step down as trust protectors and for the family to use non-U.S. citizens instead, due to "new trust regulations and ugly case law." 8/19/99 email from Ms. Robertson to Ms. Boucher (PSI\_WYBR00529).

<sup>535</sup> See, e.g., 2/6/04 and 11/25/04 letters signed by Ms. Robertson resigning from various trusts (PSI\_ED00072699-705, SR0000682, 84, 86-89, 726, 862, 1052, 1054, 1056).



A document prepared by Ms. Boucher describes what the Wyllys were looking for in a trust protector. The document states: “Protectors should be individuals who: are familiar with the Wyly activities[;] have knowledge and expertise in structuring transactions and investing in the types of assets required[;] are familiar with and comfortable to interact with trustees, attorneys, brokers and other financial intermediaries to coordinate and ensure proper execution of trust activities[; and] ... are likely to be involved with Wyly activities on [a] continuing and long term basis.”<sup>536</sup> This description shows that the Wyllys were not looking for individuals who would merely safeguard trust assets; they were looking for persons who would help structure transactions, invest the trust assets, and coordinate with Wyly advisers.<sup>537</sup>

In the years reviewed by the Subcommittee, the trust protectors played a central role in the day-to-day functioning of the offshore trusts and corporations. The general pattern was for Sam or Charles Wyly, or one of their representatives, to communicate a decision about a trust asset or investment activity to one of the trust protectors who, in turn, conveyed that decision to one or more of the offshore trustees, who routinely complied. In separate interviews, Mr. French and Ms. Robertson told the Subcommittee that they did not independently determine what to communicate to the trustees regarding the trust assets. Each told the Subcommittee that they conveyed information only after receiving instructions or guidance from Sam or Charles Wyly or one of their representatives.<sup>538</sup> They also told the Subcommittee that, in their

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<sup>536</sup> 10/31/00 email from Ms. Boucher to Charles Wyly (PSI00106558-59). See also 8/7/98 fax from Ms. Robertson to Sam, Charles, and other Wyly family members describing, among other matters, the functions of a protector (PSI\_ED00073787-93).

<sup>537</sup> At times, the Wyllys considered establishing a “Protector Company” staffed with outside lawyers and trust experts, but never did so. Instead throughout the period examined in this Report, they relied on three individuals, Mr. French, Ms. Robertson, and Ms. Boucher, to carry out their directives relative to the offshore assets. Subcommittee interviews of Ms. Hennington (4/21/06) and Ms. Robertson (3/9/06). See also, e.g., 10/31/00 email from Ms. Boucher to Charles Wyly (PSI00106558-59)(discussing possible protector company and upcoming meeting to analyze issues); December 2000 emails discussing possible company names (PSI\_ED00007717, 44511-12, 47822, 24); other documents discussing possible protector company (PSI0010232; PSI\_ED00009789-90, 10104-05).

<sup>538</sup> Subcommittee interviews of Mr. French (4/21/06 and 6/30/06) and Ms. Robertson (3/9/06). For examples of communications showing Sam or Charles Wyly providing guidance on offshore assets, see, e.g., 3/10/00 memorandum from Charles Wyly to Ms. Boucher (PSI00035085)(“Sam and I recommend to our protectors that all the Sterling Software options be converted to CA options.”); April 2000 emails from Ms. Boucher to Sam Wyly and others (PSI\_ED00070335)(seeking direction on offshore sales of Michaels stock); 4/26/00 email from Evan Wyly to Ms. Boucher (PSI\_ED00043559)(“Sam recommends that the trustees exercise and sell the remainder of the Michaels options that expire this summer. Sell at \$40 or better.”); 9/15/00 email from Ms. Boucher to Ms. Robertson (MAV010831)(“I spoke to Sam today, he wants to proceed with selling 200,000 Michaels Stores shares from offshore”); 2/28/01 email from Ms. Hennington to Ms. Boucher (PSI\_ED00005370)(“I was talking to Charles yesterday

experience, the offshore trustees did not initiate investment activity or commit trust assets on their own. In addition, neither could identify any occasion during the thirteen years examined by the Report in which an offshore trustee declined to make an investment recommended by the protectors.<sup>539</sup>

The trust protectors and other Wyly representatives generally worded decisions relating to trust assets as “recommendations” to the offshore trustees to maintain the fiction that the offshore trustees were exercising independent judgment over the trusts’ assets and investment activities. On occasion, however, a Wyly representative would slip and simply direct a trust to take an action. For example, on one occasion in 2000, after Ms. Boucher had sent Evan Wyly an email about a possible action to be taken by an offshore trust and he responded, “OK to proceed as described,” Ms. Robertson intervened with this warning:

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and he was kind of thinking out loud on some stuff. He was talking about use of off-shore cash and was using the following for planning ...”; 3/27/01 agenda for “Irish Trust Group Meeting with Trust Protectors & Family Members” (PSI00110232-33)(listing topics to be discussed including, for example, trust investments in Precept and Ranger Capital, “possible loan arrangements” via Security Capital, management of Soulicana’s art collection, and trust holdings in Scottish Annuity); 5/23/01 email from Ms. Boucher to Sam Wyly and others (PSI00088927)(alerting them to planned stock sales by the offshore entities); 7/13/00 email from Ms. Hennington to Evan Wyly (PSI\_ED00004735)(informing him of a planned real estate purchase using primarily offshore funds: “Of the total cost, 98% will be funded from offshore.”); 1/31/02 email from Ms. Boucher to Charles Wyly and others (PSI00039590-92)(Ms. Boucher wrote: “I have estimated that the protectors should recommend an additional investment of \$3Million dollars into First Dallas International.” Mr. Wyly wrote: “Yes.”); 1/31/03 email from Ms. Hennington to Mr. Schaufele (BA082027)(“I have been with Charles for the last 1½ hours ... Moberly is going to make a paid in capital contribution to the company of cash.”); 5/21/03 email from Ms. Hennington to Ms. Boucher (PSI\_ED00012130) (forwarding a financial analysis of Wyly “familyperformance” which Ms. Hennington “did for Sam yesterday – he is calling about every hour with some new project”); 9/2/03 email from Ms. Boucher to Kristin Yearly (PSI\_ED00003204)(“I was speaking with Sam & Evan today, and we would like to get an idea of budget going forward at the Ranch” in order to arrange for offshore funding); and 5/3/99 email from the then head of the Wyly family office, Elaine Spang, to Ms. Hennington (HST\_PSI005574)(“Sam signed a letter authorizing Green Funding I to loan greenmountain.com \$22,000,000 under a non-recourse loan.... [A]n offshore entity will loan the funds to Green Funding I under a similar non-recourse loan, and GFI will turn the funds around to gm.com.”). See also memoranda, from 1995 to 1998, from Ms. Robertson to Sam and Charles Wyly and others seeking guidance on compensation issues, including for Irish Trust employees (SR0001019, 1021, 1026, 1037-39, 1072); 10/13/99 email from Ms. Hennington to Ms. Boucher (PSI\_ED00000267)(asking “[d]o you think we should sit down with Charles again and make sure he wants to go forward” with certain real estate transactions intended to be funded with offshore funds). See also documents cited in this and subsequent sections of this Report.

<sup>539</sup> Subcommittee interviews of Mr. French (4/21/06 and 6/30/06) and Ms. Robertson (3/9/06). Mr. French and Ms. Robertson each recalled a few times when offshore trustees raised questions about recommended investments, mentioning in particular investments in Green Mountain and Global Audio, two Wyly-related business ventures that consistently lost money. However, even then, neither trust protector could recall an occasion in which an offshore trustee actually declined to make a recommended investment.

“Remember that it is critical from a U.S. tax standpoint that there is no appearance that the Wyly’s are in control of the trusts or the protectors. You tried to word carefully, but I would recommend that you ‘inform’ of the intended recommendation and suggest they inform you if the[y] are aware of any different issues to be considered. In effect Evan approved this txn [transaction], you don’t want that.”

Evan agreed, writing to Ms. Boucher: “probably both of us need to be more careful with our wording since I’m not in control or approving; I’m just making recommendations.”<sup>540</sup> On another occasion in 2001, Ms. Hennington, then head of the Wyly family office, bypassed both the trust protectors and the offshore trustees, and directed a brokerage firm to sell 100,000 shares belonging to Quayle, an offshore corporation. After communicating with Ms. Boucher about her action, Ms. Hennington wrote: “I am so sorry about calling over there, I just did not know what problems it would cause.”<sup>541</sup>

**Tracking Assets.** In addition to conveying Wyly decisions to the offshore trustees, two of the trust protectors undertook a number of activities to track and manage the growing body of assets held in the names of offshore entities. Ms. Robertson and Ms. Boucher, for example, prepared numerous financial reports identifying the assets held by particular offshore trusts and their corporations, and routinely provided these reports to Sam and Charles Wyly.<sup>542</sup> Ms. Robertson and

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<sup>540</sup> 11/2 and 11/3/00 emails among Ms. Boucher, Evan Wyly, Ms. Robertson, and Sam Wyly (MAV010859-60).

<sup>541</sup> October 2001 emails exchanged among Ms. Hennington, Ms. Boucher, and Mr. Schaufele (PSI\_ED00000649, 654-55).

<sup>542</sup> See, e.g., 8/31/95 “Foreign Systems” (PSI\_ED00042175-86)(assets of ten offshore trusts associated with Sam or Charles Wyly); 8/7/98 fax from Ms. Robertson to Sam, Charles, and other Wyly family members (PSI\_ED00073789-90)(listing stock options held by offshore trusts); 10/31/99 “Foreign Systems” (PSI00109903)(assets of six offshore trusts associated with Sam Wyly) and (PSI00109912)(assets of four offshore trusts associated with Charles Wyly); 9/30/00 “Foreign Systems” (PSI00071741-46)(assets of five offshore trusts associated with Sam Wyly) and (PSI00071748-51)(assets of four offshore trusts associated with Charles Wyly); 9/30/00 “Offshore Stock Analysis” (PSI00071735)(listing stock holdings of nine offshore trusts); 10/31/01 “Sam Wyly Combined Cash Flow Analysis” (PSI\_ED00008514)(listing cash assets of 21 offshore corporations); 12/31/01 “Foreign Systems (SW Total Family)” (PSI00078956-72); 2/28/02 “Foreign Systems (SW including Sub Funds)” (PSI00071753-60); 10/31/02 “Foreign Systems (CW Total Family)” and “Foreign Systems (CW)” (PSI00078298-301); 2002 “Summary of Income at the Corporate level Bulldog Trust” (PSI00078315); 9/23/03 “Cash Analysis By Company” (PSI00040534, 36-38)(cash report on multiple offshore entities); 12/31/04 “Foreign Systems (SW including Sub Funds)” (PSI\_ED000095238-93); 12/31/04 “Foreign Systems (CW)” (HST\_PSI006919-24); undated “Offshore Stock Analysis” (PSI00109932)(listing stock holdings of ten offshore trusts); undated charts (PSI00071736-39, PSI00109933-36)(listing value of assets at multiple offshore trusts and their subsidiaries). See also 4/12/96 memorandum from Ms. Robertson to Sam and Charles Wyly (SR0001018-20)(“I

Ms. Boucher also prepared financial reports identifying both the offshore and onshore assets associated with a particular family, such as the Sam Wyly family, so that both sets of assets could be considered as a whole. These reports typically included, for example, columns entitled, "Sam Wyly Offshore," "Sam Wyly Onshore," and "Sam Family Combined."<sup>543</sup> The protectors also met in person with each of the offshore trustees, in the Isle of Man, on at least an annual basis.<sup>544</sup> Some of the IOM trustees also met with the protectors in the United States, and occasionally with Wyly family members.<sup>545</sup> In these meetings, the protectors discussed such issues as the offshore trust investments, planned asset transfers, acquisition of real estate, artwork and jewelry using offshore dollars, and more.<sup>546</sup> All of these activities presumably contributed to the ability of the Wyllys and their representatives to formulate and communicate decisions regarding the offshore assets.

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am spending at least 50% of my time on the Family Office. Until the last few weeks, this has been predominantly offshore with Michelle Boucher.").

<sup>543</sup> See, e.g., 6/30/99 "Wyly Family (Global)" (PSI00109923-26); 6/30/99 "Stock Status Report" (PSI00109927)(listing stock holdings under columns entitled: "Onshore," "Offshore," and "Combined"); 9/30/99 "Wyly Family (Offshore)" (PSI00109868-70); 9/30/00 "Wyly Family (Global)" (PSI00071729-32); 9/30/00 "Stock Status Report" (PSI00071733); 9/30/00 "Wyly Family (Offshore)" (PSI00071734, 40); 9/30/01 "Total SW family Offshore Balance sheet" (PSI\_ED00006863-64); 10/31/01 "Sam Wyly Combined Cash Flow Analysis" (PSI\_ED00008514-15); 12/19/01 "Charles Wyly Family - Combined" (PSI\_ED00006856-59); 12/31/01 "Global SW Family" (PSI00078955); 2/21/02 "Global SW Family" (PSI00110067); 4/11/02 "Sam Wyly Combined Cash Flow Analysis" (PSI\_ED00019840); 6/6/02 "Sam Wyly Combined Cash Flow Analysis" (PSI\_ED00019820); 9/30/03 "Sam Wyly Combined Cash Flow Analysis" (PSI00040535); 9/30/03 "Charles Wyly Combined Cash Flow Analysis" (PSI00040533); 12/31/04 "Global SW Family" (PSI\_ED00095232-33); 12/31/04 "Global CW Family" (HST\_PSI006887); 12/31/04 "Family Offshore" (PSI\_ED00095234-35); and 12/31/04 "Foreign Systems (SW Total Family)" (HST\_PSI006890); 12/31/04 "Foreign Systems (CW Total Family)" (HST\_PSI006891). See also 8/7/98 fax from Ms. Robertson to Sam, Charles, and other Wyly family members (PSI\_ED00073790-91)(explaining how the internal Wyly financial reporting system worked).

<sup>544</sup> Subcommittee interview of Ms. Robertson (3/9/06). See also, e.g., materials related to an IOM trip in September 1995 (PSI00117613); November 1997 (SR0000001; PSI00131375-76); November 1999 (PSI\_ED00043811, 65855, 68667); May 2000 (MAV008060-63); Geneva trip to meet with IOM trustees in November 2000 (PSI\_ED00044334, 44455, 44463, 44964, 46461); IOM trip in March 2001 (PSI00064918-29, 110224-31; PSI\_ED00044939); IOM trip in May 2002 (PSI\_ED00009685, 9787-92); March 2003 (PSI\_ED00011813, 13743-44.); and July 2004 (PSI\_ED00012773-75).

<sup>545</sup> Subcommittee interview of Ms. Robertson (3/9/06). See also, e.g., July 2003 emails discussing Trident visit to Dallas (PSI\_ED00002708-09); trip by Close trustee to Dallas in October 2002 (PSI\_ED00013426); trip by Inter-continental in January 2001, October 2002 and May 2004 (PSI\_ED00044503, 14421, 14352, 13458, 13318, 13334-35); trip by IFG to Dallas in January 2000 (PSI\_ED00070074); and 10/12/92 letter from Lorne House discussing meeting in Dallas in October 1992 (PSI00128344).

<sup>546</sup> See, e.g., issues identified for November 1999 meetings (PSI\_ED00043836); summary of meetings in May 2000 (MAV008060-63); issues identified for November 2000 meetings (PSI\_ED00044334, 44455, 46460-61); and agendas for May 2002 meetings (PSI\_ED00009787-92).

#### (d) Communicating Wyly Decisions on Trust Assets

To understand how the Wyly-related offshore trusts functioned, the Subcommittee reviewed communications between the trust protectors and the offshore service providers who served as the trustees of the offshore trusts and supplied nominee directors and officers for the offshore corporations.<sup>547</sup> The Subcommittee also examined communications between the trust protectors and the Wyls and their representatives. These communications not only show that the Wyls and their representatives were initiating and directing trust investment activities, they also raise questions about some of the activities undertaken by some of the offshore trustees.

**Specific Communications.** The communications reviewed by the Subcommittee show that, on a few occasions, the trust protectors conveyed general information to the offshore trustees on how the Wyls would like trust assets to be handled, such as when the protectors delivered to six trustees so-called “letters of wishes” from Sam Wyly describing how he would like trust assets to be distributed at his death.<sup>548</sup> Most of time, however, the protectors communicated with the offshore trustees by telephone and through a steady stream of correspondence, faxes, and electronic communications conveying very specific information about how to handle a wide range of trust matters, including the acquisition of new assets, the timing and terms of asset sales and transfers, and the allocation of assets among the offshore entities.

The protectors typically communicated with the offshore service provider serving as the trustee of the affected trust, providing detailed information about how a matter should be handled. For example, a 1992 letter from the Committee of Trust Protectors to the Bulldog Trustee recommended that the Bulldog Trust sell a specified number of Michaels stock options held by specified offshore corporations at or above a specified price.<sup>549</sup> The letter even recommended how the stock options should be exercised, indicating that the offshore corporations should use a cashless exercise through First Boston Corporation, using Louis Schaufele as the broker. Within two days, the Bulldog Trustee exercised

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<sup>547</sup> The Subcommittee was generally limited to reviewing communications that included at least one U.S. person, such as a U.S.-based trust protector, and were retained by a U.S. person or entity, such as the Wyly family office. Because IOM and Cayman persons and entities generally refused to provide requested documents, the Subcommittee did not gain access to many communications that involved solely offshore personnel.

<sup>548</sup> See, e.g., six letters of wishes signed by Sam Wyly, addressed to six different offshore trusts, transmitted to the trustees by Ms. Robertson in August 1997 (SR0000838-45, 967-68).

<sup>549</sup> See 4/20/92 letter from the Committee of Trust Protectors to Lorne House Trust Company Ltd. (PSI00081463-64).

the stock options exactly as recommended.<sup>550</sup> A 1998 fax from the protectors presented a similarly detailed recommendation to the LaFourche Trustee, specifying that certain corporate subsidiaries redeem a specified number of shares in an investment fund called Edinburgh, and sell a specified number of Maverick shares to a named Wyly-related corporation.<sup>551</sup> In 1997, the protectors sent the Tyler Trustee invoices listing specific “collectibles and art work,” and recommended the purchase of the specified items at a total cost of \$450,278. (PSI00078516) The trust paid the invoices five days later. (PSI00078556) In 2000, the protectors recommended that the LaFourche Trust provide \$500,000 in offshore funds to purchase “transfer development rights” for certain real estate in Colorado.<sup>552</sup> Three days later, the trust wired the funds to Colorado. (CC011870; PSI00037113)

In addition to sending communications to individual trusts, the protectors sent communications to multiple trusts regarding the transfer of specified assets from one offshore trust to another. For example, in 2001, in consultation with legal counsel, Ms. Boucher designed and the protectors recommended a complex set of transactions in which certain corporations owned by the Bulldog Trust would transfer specified assets to a corporation owned by the Delhi International Trust which, in turn, would transfer those and other specified assets, with a collective value of about \$56 million, to Security Capital.<sup>553</sup> Security Capital would then transfer them to certain Cayman limited liability corporations (LLCs) owned by the Bessie Trust. The trusts complied with the recommendation and, at the conclusion of the transactions, the specified assets were held by six Cayman LLCs associated with Sam Wyly’s six children. On another occasion in 2002, Ms. Boucher coordinated the same-day transfer of \$15 million across three offshore trusts. Wire transfers moved the funds from Devotion, owned by the LaFourche Trust; to Sarnia Investments, owned by the Lake Providence International Trust; to Greenbriar, owned by the Delhi International

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<sup>550</sup> See, e.g., PSI00081460-62 (letters from Lorne House to Michaels Stores exercising stock options as recommended by the protectors).

<sup>551</sup> See 10/30/98 fax from Ms. Boucher and Mr. French to Trident (PSI\_ED00070495).

<sup>552</sup> 3/3/00 email from Ms. Boucher to Trident, then LaFourche Trustee (PSI\_ED00047857).

<sup>553</sup> For more information on this 2001 transaction, see Report section on Bringing Offshore Dollars Back with Pass-Through Loans, below.

Trust; and finally to Security Capital.<sup>554</sup> The next day, Security Capital wired the \$15 million to Sam Wyly.

Still another example of cross-trust transfers coordinated by the protectors involves real estate. In 2000, the protectors recommended and the LaFourche Trust purchased a 244-ranch in Colorado for about \$11 million. Soon after, the protectors decided that the ranch should instead be owned by the Bessie Trust, and recommended that the LaFourche Trust, through its wholly owned corporation, Devotion, sell the property to the Bessie Trust. At first, the expectation was that the Bessie Trust would pay Devotion the purchase price plus additional costs, totaling about \$12.2 million.<sup>555</sup> But Ms. Boucher discovered that the LaFourche Trustee, then Trident, had not yet booked the real estate purchase, and was willing to re-book the transaction. Ms. Boucher recommended, and the two trusts implemented, a two-step process. First, instead of selling the real estate itself to the Bessie Trust, Devotion sold the shell corporation, called Little Woody Creek Road Ltd. (LWCRL), that was the owner of record for the property. Devotion sold this shell corporation, LWCRL, to the Bessie Trust for a nominal amount, just \$1.65. Another corporation owned by the Bessie Trust, Yurta Faf, then loaned \$12.2 million to LWCRL which, in turn, paid the funds to Devotion in satisfaction of the costs associated with buying the ranch.<sup>556</sup> This complex set of transactions was possible only because compliant trustees were willing to produce the bookkeeping favored by the protectors.

The sheer number and specificity of the protectors' recommendations indicate that these recommendations were intended to be treated by the trustees, not as suggestions or general guidance, but as specific directives for action. Through the issuance of these recommendations, the protectors effectively managed the portfolio of

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<sup>554</sup> See, e.g., 1/29/02 emails from Ms. Boucher to Lehman Brothers explaining proposed wire transfers of \$15 million to take place that day (CC012690-91). For more information on this \$15 million transaction, see Report section on Bringing Offshore Dollars Back with Pass-Through Loans, below.

<sup>555</sup> See, e.g., 3/28/00 email from Ms. Boucher to Ms. Robertson on "Little Woody Creek Ranch Limited" (PSI\_ED00047995). For more information on this real estate transaction, see Report section on Funneling Offshore Dollars Through Real Estate, below.

<sup>556</sup> See, e.g., 3/29/00 email from Ms. Boucher to Ms. Robertson on "Little Woody Creek Ranch sale to Bessie" (PSI\_ED00047999)("Good news (!) is that Francis hadn't finalized the 'restructuring' of the transaction so from a corporate records perspective Devotion has \$1.65 invested in LWCRL's capital stock and a loan to them for \$12,193,000. I'll to have Bessie buy LWCRL for \$1.65 and have Yurta Faf advance LWCRL \$12,193,000 and have LWCRL repay Devotion. Ken is moving funds around to get money available in Yurta Faf. I expect the sale etc. ... will happen Monday."). "Francis" refers to Francis Webb, an employee of Trident, who was then the LaFourche Trustee. "Ken" refers to Ken Jones of IFG, then the Bessie Trustee.

assets held by the Wyly-related offshore trusts, determining the types and mix of investments, which assets were held by which entities, and what use should be made of the assets so acquired.

**Specifying Offshore Entities.** The protectors made specific recommendations not only about buying, selling, and transferring trust assets, but also about which offshore entity should supply funds for a specific project.

For example, in 1995, Ms. Boucher wrote the following to Lorne House, then trustee for several offshore trusts: “Please arrange for the following amounts to be wired to Scottish Holdings on behalf of Bessie & Tyler [Trusts]. I suggest you use funds from Bulldog and Pitkin entities, preferably Morehouse and Roaring Fork.”<sup>557</sup> In 2000, Ms. Boucher wrote to Ms. Robertson: “I spoke to Sam today, he wants to proceed with selling 200,000 Michaels Stores shares from offshore.... I would like to recommend selling 175,000 held by East Carroll, and 25,000 of the shares held by East Baton Rouge.”<sup>558</sup> On another occasion in 2001, Ms. Boucher wrote: “We are buying \$2.5M worth of \$35 CA calls.... I’ve picked Sarnia for the transaction and sent everything to IFG.”<sup>559</sup> IFG was then trustee of the offshore trust that owned Sarnia Investments. These trust protector recommendations indicate that the trust protectors were directing not only the assets of individual trusts, but were managing the assets of multiple trusts in a coordinated fashion.

**Demands for Quick Action.** In addition to specific communications regarding the disposition of trust assets and which offshore entities should supply funds, the protectors often pressed the trustees to act quickly to implement the recommended actions, even when substantial sums were at stake.

For example, the protectors routinely presented the Tyler Trust with invoices for hundreds of thousands of dollars to purchase specified works of art and furnishings, and asked that the “funds be wired as soon as possible” since the vendors were awaiting payment.<sup>560</sup> In 2000, Ms.

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<sup>557</sup> 12/14/95 fax from Ms. Boucher to Lorne House (PSI00118176).

<sup>558</sup> 9/15/00 email from Ms. Boucher to Ms. Robertson (MAV010831).

<sup>559</sup> 6/15/01 email from Ms. Boucher to Ms. Hennington (PSI\_ED00013896).

<sup>560</sup> See, e.g., 2/12/97 fax from Ms. Robertson to Lorne House presenting 23 invoices itemizing “collectibles and art work” and recommending that the Tyler Trust, through Soulieana, purchase all of the specified items at a total cost of \$450,278 (PSI00078516). The trust paid the invoices five days later (PSI00078556). See also 4/21/99 fax from Ms. Robertson to the Tyler Trust presenting 16 invoices (PSI00078481-97)(“As in the past, the protectorate committee recommends that Tyler Trust (Soulieana Limited) consider the purchase of collectibles and



Boucher sent this email to IFG, then the Bessie Trustee: "The protector committee is recommending the acquisition of various pieces of art from Computer Associates. The total acquisition price will be \$669,735. I hope to have the invoice shortly, and expect that payment will be required early next week."<sup>561</sup>

Prompt action was also expected in real estate deals. On one occasion in 1999, the protectors pushed the LaFourche Trust to provide \$11 million in offshore funds to purchase a 244-acre ranch near Aspen, Colorado. In a subsequent email, Ms. Boucher wrote to Ms. Robertson: "Francis [Webb of Trident, then the LaFourche Trustee] commented after the fact on being very rushed on moving forward with the Woody Creek Ranch closing. Which he was, but that's life."<sup>562</sup> In 2001, on a Thursday, Ms. Boucher indicated to the Wyly family office in Dallas that she had requested that the trustees provide \$3.6 million in operating funds for one piece of property, and \$1.5 million for another, and "I expect the trustees will have it to move to you Tuesday or Wednesday next week."<sup>563</sup>

Stock recommendations were also expected to be carried out promptly. In 2001, for example, Ms. Boucher wrote to Sam and Evan Wyly that a "protector recommendation will go out overnight" recommending that certain offshore entities sell a total of 270,000 shares of Scottish Annuities & Life Holdings Inc. using stockbroker Lou Schaufele to "move the stock out in the market, at his discretion but at no less than \$15 per share." She stated that "trading should commence tomorrow."<sup>564</sup>

The protectors' expectation that trustees would quickly implement their recommendations is additional indication that the recommendations were intended, not as suggestions, but as detailed instructions for action.

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artwork. I am attaching invoices ... totalling \$224,298.26. ... If possible, could these funds be wired **AS SOON AS POSSIBLE** since vendors need to be paid immediately." (emphasis in original). For more information, see Report section on Spending Offshore Dollars on Artwork, Furnishings, and Jewelry, below.

<sup>561</sup> 11/17/00 email from Ms. Boucher to IFG (PSI\_ED00044504).

<sup>562</sup> 11/4/99 email from Ms. Boucher to Ms. Robertson on "items for trustees" (PSI\_ED00043836-37).

<sup>563</sup> 9/6/01 email from Ms. Boucher to Wyly family office employees (PSI\_ED00014220). See also, e.g., 9/6/01 letter from Lake Providence International Trust's subsidiary Sarnia Investments (CC027321) (requesting \$1.5 million wire transfer on the same day that Ms. Boucher had recommended it).

<sup>564</sup> 5/23/01 email from Ms. Boucher to Sam and Evan Wyly (PSI00088927).

### (e) Trustee Compliance with Wyly Decisions

The documents reviewed by the Subcommittee also contain numerous examples of instances in which the offshore trustees complied with decisions made by the Wyllys or their representatives, further illustrating their influence over the offshore assets.<sup>565</sup>

**Pass-Through Lender.** One example of Wyly influence over the offshore assets involves Security Capital, a shell corporation established in the Cayman Islands by Queensgate Bank & Trust Co. Ltd. (Queensgate Bank) to participate in pass-through loan transactions with Wyly interests.<sup>566</sup>

According to the Wyllys' legal counsel, Queensgate Bank formed both Security Capital Trust and Security Capital Ltd. in August 1998. According to counsel, Security Capital Trust is a Cayman charitable trust whose grantor and trustee is Queensgate Bank, and Security Capital Ltd. is a Cayman corporation wholly-owned by the Trust. The directors of the corporation are four Queensgate employees as well as the managing director of IFG, and the managing director of Trident.<sup>567</sup> IFG and Trident were then and remain today trustees of Wyly-related offshore trusts that own the offshore corporations that loaned funds and other financial assets to Security Capital.<sup>568</sup>

Security Capital Ltd. is a shell corporation with no assets, office or employees of its own. Nevertheless, on ten occasions, various Wyly-related offshore corporations loaned millions of dollars in cash or other financial assets to Security Capital Ltd. which loaned the same amount of cash or assets to a Wyly-related person or entity. Nine out of ten of the loan recipients were located in the United States, including Sam and Charles Wyly who personally received more than \$60 million in offshore cash from Security Capital pass-through loans. Altogether, Security Capital served as an intermediary for nearly \$140 million in offshore funds and financial assets that were passed from one set of Wyly-related interests to another.

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<sup>565</sup> See also other sections of this Report.

<sup>566</sup> For more information about Security Capital, see Report section on Bringing Offshore Dollars Back with Pass-Through Loans, below.

<sup>567</sup> According to the Wyllys' legal counsel, Security Capital Ltd.'s directors are: John Dennis Hunter, Karla Bodden, Blair Gauld, and Jane Fleming of Queensgate Bank; David Harris of IFG; and David Bester of Trident.

<sup>568</sup> From at least 1998 until 2004, IFG was the trustee of the Bessie, Bulldog, and Delhi International Trusts, while Trident was trustee of the Pitkin and Tyler Trusts, among others.

In their dual roles as trustees of the offshore trusts and directors of Security Capital, the IFG and Trident managing directors presumably participated in approving both the loans by Wyly-related offshore corporations to Security Capital and the Security Capital loans to Wyly-related interests.<sup>569</sup> Documents show instances in which IFG and Trident communicated with the Wyly trust protectors and received trust protector recommendations on transferring offshore dollars or other financial assets to Security Capital;<sup>570</sup> on occasion, IFG and Wyly representatives also discussed Security Capital's loaning funds to the Wylys.<sup>571</sup> It appears that the IFG and Trident directors facilitated these transfers, allowing the offshore corporations to lend millions of dollars to Security Capital despite its being a shell operation, and allowing Security Capital to function as a pass-through to loan offshore dollars and other financial assets to Wyly-related interests.

**Buying Assets.** On several occasions, the offshore trustees used trust funds to purchase assets recommended by the Wylys or their representatives, despite trustee concerns about the cost or value of those assets. Three examples illustrate this point.

On one occasion in 1992, the trust protectors recommended that the Bulldog and Pitkin Trusts purchase from Sam Wyly a specified number of shares of a privately-held company, Photomatrix Corporation, at 12 cents per share.<sup>572</sup> Mr. Buchanan of Lorne House, then Trustee of the Bulldog and Pitkin Trusts, wrote to the protectors as follows:

“While we have the greatest admiration for the Protectors’ advice, an additional burden of responsibility is thrown upon us when the suggestion is made that we should buy securities from the Settlers. We cannot find a market quotation for Photomatrix. While we do not wish to suggest that 12 cents is a wrong price, we do need something for our records to show that it was a fair one. We would also like to know the

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<sup>569</sup> Neither IFG nor Trident agreed to provide an interview to the Subcommittee to discuss their roles in Security Capital.

<sup>570</sup> See, e.g., 6/13/01 email from Ms. Boucher to David Harris at IFG and Ms. Hennington (PSI\_ED00006047)(transmitting lengthy document entitled, “Summary of Proposed transactions,” describing transfer of financial assets from offshore entities to Security Capital) and 6/3/02 letter signed by IFG employees on behalf of Locke to Bank of America (BA003936)(authorizing a \$5 million wire transfer to Security Capital).

<sup>571</sup> See, e.g., July 2003 emails involving David Harris of IFG, Ms. Hennington, and Ms. Boucher (PSI00040540-42)(discussing Security Capital line of credit for Sam Wyly).

<sup>572</sup> 10/9/92 letter from Ms. Robertson to Lorne House, with a copy to Mr. French (PSI00118984-85).

registered address of Photomatrix, in case – having bought stock – we do not receive information to which we would be entitled as shareholders.”<sup>573</sup>

The protectors were recommending that the Trusts buy, not only an illiquid security in an unknown company, but also that they purchase the shares at a specified price from a particular seller, Sam Wyly, the grantor of one of the Trusts. Despite expressing concern about the value of the stock and the underlying company, the Trustee carried out the requested purchase, using Bulldog and Pitkin funds to buy more than 410,000 shares from Sam and Charles Wyly at the requested price.<sup>574</sup>

In 1996, the protectors recommended that the Bessie Trust direct its wholly owned corporation, Audubon Assets Ltd., to sell certain Treasury bills and use the proceeds to purchase a painting called Noon Day Rest for £155,000 or about \$240,000.<sup>575</sup> This painting had been selected by Sam Wyly’s wife, and the Wyllys wanted the trust to pay the cost. Mr. Buchanan of Lorne House, then the Bessie Trustee, expressed concern that the painting was overpriced, would not increase in value as quickly as Treasury bills, and would be difficult to sell at short notice. Mr. French, the trust protector, insisted that the trust pay the bill. Audubon Assets purchased the painting, which was shipped to Dallas.

On another occasion in 1999, one of the trust protectors wrote that the managing director of IFG, then trustee for several of the offshore trusts, “has been raising hell about the money going into Green Mountain,”<sup>576</sup> an energy business acquired by the Wyllys in 1997. Although Green Mountain had lost money since its acquisition in 1997, wire transfer records reviewed by the Subcommittee show that the offshore trusts repeatedly transferred millions of dollars to the company. These funds totaled over \$50 million by early 1999, with the bulk provided by trusts administered by IFG.<sup>577</sup> In response to the trust protector’s communication regarding IFG’s concern about investing in Green Mountain, Sam and Evan Wyly apparently spoke personally with

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<sup>573</sup> 10/12/92 letter from Mr. Buchanan to Mr. French (PSI00128344).

<sup>574</sup> See, e.g., 1/15/93 listing of Bulldog assets (PSI00029079)(showing Bulldog has over 238,000 Photomatrix shares) and 5/31/93 listing of Pitkin assets (PSI00127231)(showing Pitkin has over 179,000 Photomatrix shares).

<sup>575</sup> For more information about the purchase of this painting, see Report section on Spending Offshore Dollars on Artwork, Furnishings, and Jewelry, below.

<sup>576</sup> 8/19/99 email from Ms. Robertson to Ms. Boucher (PSI-WYBR00529).

<sup>577</sup> For more information about Green Mountain, see the discussion of this company in Report section on Supplying Offshore Dollars to Wyly Business Ventures, below.

the managing director of IFG.<sup>578</sup> Over the next four years, from 1999 until 2003, the offshore trusts administered by IFG continued to send money to the company, providing Green Mountain with another \$74 million.<sup>579</sup>

These incidents, and others cited in the Report sections that follow, show that the Wyllys and their representatives, rather than the offshore trustees, initiated the decisions to acquire trust assets and invest trust funds. These incidents also show that, even when the offshore trustees had qualms about the cost or value of an investment identified by the Wyllys, the trustees adopted the investment recommendations they were given.

**Giving Up Trust Assets.** The trusts also, on occasion, gave up trust assets, because they were asked to do so by the Wyllys or their representatives. In some cases, the assets were moved from one trust to another; in other cases, the assets were simply surrendered. In 2001, for example, the Bulldog and Delhi International Trusts complied with a trust protector recommendation to transfer specified assets valued at more than \$56 million to Security Capital in exchange for promissory notes.<sup>580</sup> The assets ended up in the possession of six Cayman limited liability corporations owned by the Bessie Trust.

In another example in 1998, the trust protectors recommended that the Bessie and Tyler Trusts approve a restructuring of Scottish Holdings, Ltd., then part of an offshore insurance venture founded by the Wyllys and Mr. French.<sup>581</sup> The proposed restructuring required the trusts to give up part of their ownership interests to enlarge the ownership interest held by the South Madison Trust, an offshore trust benefitting Mr. French. Because Lorne House, then the Trustee of the Bessie and Tyler Trusts, expressed concern about surrendering the Trusts' ownership interests, Charles Wyly and Ms. Robertson provided a letter on behalf of Tyler

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<sup>578</sup> See, e.g., 1/4/00 email from Evan Wyly to Ms. Robertson (PSI\_ED0070074)(stating that Sam and Evan Wyly would like to meet with David Harris of IFG about Green Mountain when Harris was in Dallas the following week); 4/25/00 email from Evan Wyly to IFG (PSI\_ED00048130-32)(showing Evan Wyly answering IFG questions about Green Mountain); 4/10/03 emails among Evan Wyly, David Harris, and Ms. Boucher (PSI\_ED00011922-26)(showing Evan Wyly answering IFG questions about Green Mountain).

<sup>579</sup> Altogether, according to the wire transfers traced by the Subcommittee, from 1997 to 2003, the offshore trusts administered by IFG invested about \$119 million in Green Mountain, which represents the bulk of offshore funds sent to the company.

<sup>580</sup> For more information on this 2001 transaction, see Report section on Bringing Offshore Dollars Back with Pass-Through Loans, below.

<sup>581</sup> For more information about this restructuring, see section on Scottish Re Group, below.

Trust indemnifying the Trustee for “any costs of any nature” that might result from approving the restructuring. The letter stated:

“We understand that you are concerned that the following documents which we are asking you to sign as Trustees of the Tyler Trust appear to be more favourable to the beneficiaries of the South Madison Trust than to the beneficiaries of the Tyler Trust. It is nevertheless our wish that you should sign them on behalf of the Tyler Trust and we hereby indemnify you against any costs of any nature and to hold you harmless with respect to any consequences of your signing the documents.”<sup>582</sup>

The letter was signed by Charles Wyly as settlor of the Tyler Trust, even though he was not, in fact, the settlor; and by Ms. Robertson as a “Disinterested Member, Committee of Protectors.”<sup>583</sup> Sam Wyly provided a similar letter, signing it as “settlor” of the Bessie Trust, even though he was not, in fact, the settlor.<sup>584</sup> Neither letter was signed by Mr. French who was a South Madison Trust beneficiary and stood to profit from the proposed restructuring. One month later, in February 1998, the Bessie and Tyler Trusts consented to the restructuring even though it diminished the trusts’ assets.<sup>585</sup>

Two months later, in April 1998, the protectors removed Lorne House as Trustee of the Tyler and Bessie Trusts.<sup>586</sup> Ms. Robertson told the Subcommittee that the decision was made because Lorne House was too small and too old-fashioned for them to rely on.<sup>587</sup> Lorne House, however, offered another explanation several years later in the minutes of a meeting discussing a matter involving the Bessie Trust: “We were asked to resign as trustees after we had queried the benefits that the

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<sup>582</sup> 1/5/98 letter from Charles Wyly and Ms. Robertson to Lorne House (PSI00131346).

<sup>583</sup> The Tyler Trust was, in fact, settled by Keith King as a foreign grantor trust benefitting Charles Wyly and his family.

<sup>584</sup> 1/15/98 letter from Sam Wyly and Ms. Robertson to Lorne House (PSI00117555). The Bessie Trust had been settled by Keith King as a foreign grantor trust benefitting Sam Wyly and his family.

<sup>585</sup> For more information about this matter and Scottish Re, see Report section on Supplying Offshore Dollars to Wyly Business Ventures, below.

<sup>586</sup> 4/23/98 letter from the Committee of Trust Protectors to Lorne House (PSI00131353)(replacing Lorne House as trustee of the Bessie and Tyler Trusts); 5/11/98 Deed of Retirement and Appointment of New Trustees for the Bessie Trust (CC015786-87).

<sup>587</sup> Subcommittee interview of Ms. Robertson (3/9/06).

Wyly brothers' in-house lawyer, who was not an appointed beneficiary, sought for himself.”<sup>588</sup>

Another remark made by Lorne House in connection with the same offshore insurance venture is also revealing about the amount of influence being exercised over the trusts. In 1995, Mr. Buchanan complained to Mr. French about the failure of Scottish Re to supply financial information needed to monitor trust investments in the company. Mr. Buchanan commented: “Lorne House Trust, as a trustee, is fighting the IRS in Northern California where the IRS is contending that a corporation owned by the (foreign) trust is the mere ‘alter ego’ of the Settlor, even though I can assure you that the settlor in question has been far more willing to leave us in genuine control – a fact which promises to win us the case – than S. appears to be.”<sup>589</sup> Apparently, with respect to Scottish Re, Mr. Buchanan felt that Lorne House had less than “genuine control.”

**Circumventing SEC Reporting.** In some cases, the offshore trustees complied with trust protector recommendations, even when they knew the objective of the recommendations was to circumvent SEC reporting requirements. One such example involves the creation and dissolution of the Plaquemines Trust. From 1992 until 1995, Lorne House had on file with the SEC a disclosure form known as a Schedule 13D reporting that, as trustee of the Bulldog and Pitkin Trusts, it exercised beneficial ownership over 18 percent of the outstanding shares of Sterling Software.<sup>590</sup> Under U.S. securities law, a 13D filing must be submitted by all shareholders who own more than five percent of the stock of a U.S. publicly traded corporation. In early 1995, however, apparently to circumvent this filing requirement, the trust protectors recommended that Bulldog transfer a sufficient number of the Sterling Software shares to another offshore trust with a different trustee, so that Lorne House would fall below the five percent reporting threshold. This decision was made even though SEC Rule 13D states explicitly that a trust may not be created or used to evade the reporting requirement.

In March 1995, Lorne House, then the Bulldog Trustee, discussed with one of the trust protectors, Mr. French, a plan to transfer two of

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<sup>588</sup> 5/7/02 minutes of Lorne House Trust Committee discussing the Bessie Trust (PSI00117525).

<sup>589</sup> 3/1/95 letter from Mr. Buchanan of Lorne House to Mr. French (PSI00120863-64). “S.” is believed to be a reference to Sam Wyly.

<sup>590</sup> For more information about Schedule 13D, the Lorne House filings, and the circumstances surrounding its decision to stop filing this report, see Report section on Converting U.S. Securities into Offshore Cash, below.

Bulldog's corporations, East Carroll and East Baton Rouge, each of which owned a significant number of Sterling Software shares, to a new IOM trust that was to be called the Plaquemines Trust. On March 6, 1995, a Lorne House employee wrote to Mr. French about the plan as follows:

"Thank you for your fax dated March 3<sup>rd</sup>. We intend to transfer East Carroll Limited and East Baton Rouge Limited from Bulldog to Plaquemines, this would mean that Plaquemines would hold 350,000 shares and Bulldog would hold 644,725 shares of Sterling Software."<sup>591</sup>

The Lorne House managing director, Ronald Buchanan, sent Mr. French another fax the next day:

"Bulldog will settle Plaquemines, in the words which you suggested. Since the purpose of the exercise, as I understand it, is to divide the ownership of Sterling Software we need to split ownership of the underlying companies which own SS between the two trusts. That was the purpose of Barbara's fax of yesterday."<sup>592</sup>

The Plaquemines Trust agreement states that the trust was established on February 28, 1995, even though these Lorne House communications indicate that, as of March 7, the wording of the trust agreement had not yet been finalized.<sup>593</sup> This timing suggests that the trust agreement may have been backdated. The trust agreement indicates that the grantor was the Bulldog Trust, and the trustee was Wychwood. On March 19, 1995, Lorne House amended its Schedule 13D for Sterling Software, reporting that on March 6, 1995, it transferred 350,000 shares "for no consideration, to another trust with a separate and independent trustee."<sup>594</sup> Lorne House reported that, as a result of this transfer, it possessed just 4.6 percent of the outstanding shares, which meant that it was no longer obligated to file. Although Lorne House reported transferring the shares in March, corporate resolutions for the Bulldog Trust show that it actually transferred East

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<sup>591</sup> 3/6/95 fax from Barbara Rhodes of Lorne House to Mr. French (PSI00120860).

<sup>592</sup> 3/7/95 fax from Mr. Buchanan of Lorne House to Mr. French (PSI00120859).

<sup>593</sup> See 2/28/95 Plaquemines Trust Agreement (PSI00064668-99).

<sup>594</sup> 3/10/95 Schedule 13D filed by Lorne House regarding Sterling Software, at 5.



Carroll and East Baton Rouge to the Plaquemines Trust a month later, on April 5, 1995.<sup>595</sup>

About five months later, on August 15, 1995, Ms. Robertson sent a fax to Wychwood recommending that Wychwood resign as trustee of the Plaquemines Trust.<sup>596</sup> A fax dated the following day from Lorne House to Mr. Cairns, the managing director of Wychwood, and others explained that Ms. Robertson and Mr. French, the two trust protectors, wanted quickly to purchase certain Sterling Software call options on the public market using the Plaquemines Trust, among others, to make the purchase.<sup>597</sup> The fax explained further: “Wychwood must not be trustee of two sets of trusts which are buying options simultaneously since the amount involved would trigger a reporting requirement. We have been asked, therefore, to transfer the trusteeship of the Plaquemines and Delhi Trusts from Wychwood to a temporary trustee.” Janek Basnet, an Isle of Man resident, replaced Wychwood as the trustee of the Plaquemines and Delhi International Trusts that same day.<sup>598</sup> Three months later, in November 1995, Mr. Basnet was replaced by IFG as the Plaquemines Trustee.<sup>599</sup>

Three years later, in June 1998, in response to a request, legal counsel for IFG provided a five-page letter identifying serious defects in how the Plaquemines Trust had been established.<sup>600</sup> Among other problems, the letter noted that the Plaquemines Trust agreement violated a doctrine known as the Rule Against Perpetuities which bans trusts of overly long duration, and that the agreement incorrectly named as beneficiaries the “issue” of the Bulldog Trust instead of the issue of Sam Wyly, thereby apparently omitting Sam Wyly’s children from the trust beneficiaries. Five months later, in November 1998, the same law firm recommended voiding the trust.<sup>601</sup> Despite this letter, no action was

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<sup>595</sup> 4/5/95 Resolutions of the Trust Committee of Lorne House (PSI00122306-07). See also 4/4/95 letter from Lorne House to Ms. Robertson (PSI00120767-68)(discussing Sterling Software shares held by Bulldog, Pitkin and Plaquemines trusts).

<sup>596</sup> 8/15/95 fax from Ms. Robertson to Mr. Cairns (PSI00124623).

<sup>597</sup> 8/16/95 fax from Mr. Buchanan of Lorne House to Shaun Cairns, Janek Basnet, and others (PSI00118019). See also 7/10/95 fax from Mr. French to Mr. Buchanan (PSI00136718).

<sup>598</sup> See, e.g., 11/22/95 Deed of Retirement and Appointment of New Trustees for the Plaquemines Trust (CC020119-22)(providing a short history of key dates for the Plaquemines Trust).

<sup>599</sup> *Id.* The document names Aundyr Trust Company Ltd. which is an IFG subsidiary.

<sup>600</sup> 6/5/98 letter from Mann & Partners, an IOM law firm, to David Harris, managing director of IFG (PSI-WYBR00470-75).

<sup>601</sup> 11/5/98 letter from Mann & Partners to IFG (PSI-WYBR00479-80).

taken on the trust for another year. In August 1999, IFG informed the trust protectors of its intention to void the Plaquemines Trust and “appoint” its assets to its grantor, the Bulldog Trust.<sup>602</sup> IFG stated in part: “You will recall our previous discussions in relation to ... our great concerns that the original appointment from the Bulldog Trust into Plaquemines Trust was invalid. Local Counsel agree with our concerns and we have now finalised our position on the matter.” In December 1999, IFG deemed the Plaquemines Trust “void” and transferred all of its assets back to its grantor, the Bulldog Trust.<sup>603</sup> There is no public filing showing that an Isle of Man court validated this process.

This short history of the Plaquemines Trust indicates that it was used for an improper purpose, to circumvent SEC disclosure requirements, and was possibly backdated. In its first year of operation, it had three different trustees. On the mistaken theory that U.S. shares did not have to be disclosed to the SEC if they were held by different trusts with different trustees, the trustees apparently agreed to juggle their trustee posts and trust holdings in an effort to stay under the reporting threshold. Once a Plaquemines Trustee was finally settled on, it was discovered that the trust agreement itself was defective. Although the defects were spelled out in a five-page letter in mid-1998, the offshore trustee did not take action to correct the defects for more than a year. In December 1999, IFG voided the trust and returned its assets to the Bulldog Trust, describing the Plaquemines Trusts as “void ab initio” and characterizing it as if it had never existed for four years. Another problem, however, was that the Bulldog Trust itself had also been identified as defective, as discussed below.<sup>604</sup> Together, these facts paint a picture of offshore trustees willing to help frustrate U.S. securities disclosure requirements, juggle trusteeships and trust assets, and allow the continued operation of a trust known to be defective.

**Dummy Foreign Grantors.** Additional evidence of Wyly influence over the offshore trusts involves the four foreign grantor trusts established in 1994 and 1995, the Bessie, Tyler, LaFourche, and Red Mountain Trusts, to benefit the Wyly family.

Mr. French told the Subcommittee that, in 1994, he asked Keith King, a non-U.S. citizen and then a director of Lorne House, if he would be willing to establish a foreign grantor trust benefitting the Wyly

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<sup>602</sup> 7/29/99 fax from IFG’s subsidiary Aundyr Trust Company to the “Protectorate Committee” of the “Bulldog/Plaquemines Trust” (PSI-WYBR00523-25).

<sup>603</sup> 12/30/99 minutes of a meeting of the Ayundr Trust Company directors (PSI00135539; PSI-WYBR00526-27).

<sup>604</sup> See, e.g., 5/12/98 letter from Mann & Partners to IFG (PSI-WYBR00371-73).

family.<sup>605</sup> At that time, foreign grantor trusts were allowed to distribute trust funds to U.S. beneficiaries tax free, and the purpose of the request was to obtain those tax benefits for Wyly family members. In response to Mr. French's request, Mr. King established the Bessie Trust whose beneficiaries were Mr. King, Sam Wyly, and his family; and the Tyler Trust whose beneficiaries were Mr. King, Charles Wyly, and his family.<sup>606</sup> Each trust agreement stated that Mr. King, as grantor, had contributed the initial trust assets of \$25,000 cash.

In 1995, Shaun Cairns, managing director of Wychwood, established two more foreign grantor trusts: the LaFourche Trust, whose beneficiaries were Sam Wyly and his family, and the Red Mountain Trust, whose beneficiaries were Charles Wyly and his family. Each trust agreement stated that, Mr. Cairns, as grantor, had contributed initial trust assets of \$25,000 in cash.<sup>607</sup> These two trusts were established on short notice as part of an effort, described later, to buy Sterling Software call options without triggering SEC reporting requirements.<sup>608</sup>

The LaFourche and Red Mountain Trusts were established in July 1995. In October 1995, Mr. French identified numerous clerical and substantive errors in the trust agreements. Wychwood agreed to make the requested changes in the text, and apparently backdated the corrected trust agreements to July, the original trust date.<sup>609</sup>

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<sup>605</sup> Subcommittee interview of Mr. French (4/21/06).

<sup>606</sup> See Appendix 1 for more information about the four foreign grantor trusts.

<sup>607</sup> Some documents suggest that Mr. Cairns and Mr. King may have been reimbursed for the funds they contributed to the four trusts as initial trust assets. See, e.g., 10/17/95 fax from Mr. Cairns to Mr. French (PSI-WYBR00308) ("I have had a chat to Ronnie [Buchanan] regarding the reimbursement of the \$50,000 and he has asked me to refer the matter directly to you."); 11/26/95 fax from Mr. Buchanan of Lorne House to Mr. French (PSI00118234) ("Loan notes for the \$24,999s follow. Please fax the Protectors' authorisation to forgive the notes, as of today."); 12/31/95 balance sheets for the Bessie Trust and Tyler Trust (PSI-WYBR00310-11) (each showing a \$24,999 loan to "Berkshire Trust" which may have provided the initial funding). See also 1/19/96 note from "RB," presumably Ronald Buchanan, to "JKB," presumably Janek Basnet, and others (PSI00137842) ("It has been decided, belatedly, to give Shari [Robertson] a trust. MF [Michael French] will ask KKK [Keith L. King] to fund it: Bulldog & Pitkin are to repay him.").

<sup>608</sup> See, e.g., 7/10/95 fax from Mr. French to Mr. Buchanan (PSI00136718); 7/10/95 fax from Mr. French to Mr. Cairns (PSI00136721); 7/12/95 fax from Susan Sims, who worked with Mr. French, to Mr. Cairns (PSI00136720); 8/16/95 fax from Mr. Buchanan of Lorne House to Shaun Cairns, Janek Basnet, and others (PSI00118019); undated "Note to file" on the 8/16/95 fax by Mr. Buchanan (PSI00124625). For more information about the formation of these trusts, see Report section on Converting U.S. Securities into Offshore Cash, below.

<sup>609</sup> See 10/3/95 fax from Mr. French to Mr. Cairns (PSI-WYBR00296) (Mr. French wrote: "Shari Robertson and I have reviewed the copies of the two trusts you faxed to us. There are some clerical errors that must be remedied. I assume the documents can be redone to reflect these corrections. ... Please see to it these corrections are effected as soon as possible.");

At the time the four foreign grantor trusts were created, an IRS Revenue Ruling held that a foreign trust “owned” by a foreign grantor could distribute its income during the lifetime of the grantor to U.S. beneficiaries tax free.<sup>610</sup> In light of this Revenue Ruling, a U.S. law firm, Morgan, Lewis, & Bockius, had issued a legal opinion holding that an Isle of Man grantor trust, with a non-U.S. grantor, could issue tax-free distributions to U.S. beneficiaries during the grantor’s lifetime.<sup>611</sup> The problem, however, was that the Revenue Ruling also stated that the test for whether a foreign grantor “owned” a foreign trust was whether the foreign grantor exercised “dominion and control over the income and corpus of the trust” and “absolute power to dispose of the beneficial enjoyment of both the income and the corpus of the trust.”<sup>612</sup>

With respect to the Isle of Man trusts, the Morgan Lewis opinion did not describe facts that established control by the foreign grantor; instead the letter stated that the trustee of the foreign trust would operate “subject, in most cases, to the consent of a protector.”<sup>613</sup> The four Wyly-related foreign grantor trusts used the same protectors as the other Wyly-related offshore trusts, Mr. French and Ms. Robertson, who told the Subcommittee that their practice was to convey decisions made by the Wyllys and their representatives to the trustees.

Other information in this Report provides examples of how the Wyllys and their representatives exercised direction over the assets and income of the four trusts. In August 1995, for example, soon after the LaFourche and Red Mountain Trusts were established, the trust protectors directed and the Wychwood trustee caused the two corporations owned by the two new trusts to buy 500,000 Sterling Software call options.<sup>614</sup> In 2000, the protectors recommended and the LaFourche Trust purchased a 244-ranch in Colorado for about \$11

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10/17/95 email from Mr. Cairns to Mr. French (PSI\_WYBR00308)(Mr. Cairns wrote: “Sorry for the delay in sending you the attached. We have made additional changes to the 4<sup>th</sup> Schedule of Lafourche .... Could you please let me have your views before I have them signed up and dated. (Back dated).”).

<sup>610</sup> Rev. Rul. 69-70, 1969-1 C.B. 182. This revenue ruling was invalidated on a prospective basis by legislation enacted in 1996, as described earlier.

<sup>611</sup> 2/15/94 memorandum by Charles G. Lubar of Morgan, Lewis, & Bockius, to Mr. French (PSI-WYBR00285-89).

<sup>612</sup> Rev. Rul. 69-70; 1969-1 C.B. 182.

<sup>613</sup> 2/15/94 memorandum from Charles G. Lubar of Morgan, Lewis, & Bockius, to Mr. French (PSI-WYBR00285-89).

<sup>614</sup> 8/15/95 fax from Ms. Robertson to Mr. Cairns (PSI00124623). For more information about these 500,000 call options, see Report section on Converting U.S. Securities into Offshore Cash, below.

million. A few months later, the protectors decided that the ranch should instead be owned by the Bessie Trust, and the LaFourche Trust sold the property to the Bessie Trust.<sup>615</sup> In 2001, the Wyllys and their representatives devised a plan to create subfunds for the Bessie Trust, directed the Bessie Trust to establish six Cayman limited liability corporations, and directed that \$56 million worth of financial assets be transferred from other Wyly-related trusts to the Cayman LLCs.<sup>616</sup>

These and other incidents indicate that Mr. King and Mr. Cairns may have been acting as so-called “strawmen” for the Wyllys who were the true grantors of the four trusts. Indeed, at one point, both Sam and Charles Wyly signed letters as grantors of the Bessie and Tyler Trusts, and no one involved with the trusts contradicted them.<sup>617</sup>

**Bulldog II and Pitkin II.** In 2000, two more IOM trusts were created, referred to as the Bulldog II and Pitkin II trusts. Four years later, both were voided by their trustees. The legal contortions used to create and void these trusts for tax purposes are still more evidence of the offshore trustees’ readiness to advance and protect Wyly interests.

In May 1998, legal counsel advised IFG, then trustee of the Bulldog and Pitkin Trusts, that both the Bulldog and Pitkin Trusts violated the Rule Against Perpetuities barring trusts of overly long duration.<sup>618</sup> The letter referenced “previous advisers” who had also identified this problem. The letter proposed a possible solution that would involve setting a termination date for the trust. Apparently, no action was taken for another two years.

In May 2000, a memorandum prepared by one of the trust protectors, Ms. Robertson, for Sam and Charles Wyly and others indicated that a decision had been made to establish two replacement trusts, the Bulldog II and Pitkin II trusts, and to merge the old Bulldog and Pitkin trusts into them to resolve the perpetuity problem.<sup>619</sup> The memorandum stated that three other Wyly-related offshore trusts, the Castle Creek, Delhi, and Lake Providence International Trusts, would

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<sup>615</sup> See discussion of these transactions, above.

<sup>616</sup> For more information about this \$56 million transaction, see Report section on Bringing Offshore Dollars Back with Pass-Through Loans, below.

<sup>617</sup> 1/5/98 letter from Charles Wyly and Ms. Robertson to Lorne House (PSI00131346); 1/15/98 letter from Sam Wyly and Ms. Robertson to Lorne House (PSI00117555).

<sup>618</sup> 5/12/98 letter from Mann & Partners to IFG (PSI-WYBR00371-73).

<sup>619</sup> 5/12/00 memorandum from Ms. Robertson to Sam, Charles, and Evan Wyly and Donald Miller summarizing her recent trip to the Isle of Man (MAV008060).

also be merged into the new trusts to reduce the overall number of offshore trusts. In October 2000, the new trusts were established and the Bulldog and Pitkin Trusts were merged into them. (PSI00135560-63; MAV008252) A few months later, in March 2001, the Delhi and Lake Providence International Trusts were merged into Bulldog II (PSI00135564-67), while the Castle Creek International Trust was merged into Pitkin II (PSI00059880-81).

Two years later, in 2003, IFG, then the Bulldog II Trustee, identified tax problems with the Bulldog II trust. IFG wrote:

“The Bulldog Trust was created by a trust agreement dated 11 March 1992 between Sam Wyly, a wealthy US person, and Lorne House Trust Company Limited. The current trustee of the trust is IFG .... The reason for creating the trust was tax driven. Its purpose was to take the assets held/to become held within the trust and various Isle of Man companies owned by it outside of the settlor’s estate for US gifts and estate tax purposes and at the same time to create a fund the income and gains of which were not attributable to any of the settlor or his family. The assets within the trust are now very substantial.

“During 1998 and 1999 the trustees, together with the settlor’s advisers, considered a number of possible amendments to the trust so as to create a structure that would be even more ‘efficient’ for tax purposes. ... Ultimately the revised tax planning arrangements were not proceeded with. However ... the trustees declare[d] a new trust, Bulldog II Trust, and ... merge[d] the original Bulldog Trust into Bulldog II Trust. ...

“In the light of various amendments to US tax legislation since 1992 the settlor has, with his advisers, been reconsidering his income tax position and the trustee is now advised that the merging of the original Bulldog Trust into Bulldog II Trust may have caused the trust to become a grantor trust for US income tax purposes. Clause 5.9 of the original Bulldog Trust contains a specific provision that ‘the trustee shall not at any time prior to the termination of this trust take any action or do any act which may cause this trust to become a grantor trust for United States income tax purposes.’

“In light of the preceding paragraph it is the trustee’s view that the purported merger of Bulldog Trust into Bulldog II Trust was void ab initio.”<sup>620</sup>

This document portrays the offshore trustees as willing participants in “tax driven” transactions to structure the IOM trusts to be immune to U.S. taxation. It also shows that, when an effort to improve a trust’s tax “efficiency” by merging it into another trust failed, the trustee was ready to declare that the merger never took effect, but was “void ab initio.”

In March 2004, an IOM law firm confirmed the problems identified by IFG, and IFG asked Meadows Owens to review a proposal to unwind Bulldog II and reconstitute the original Bulldog Trust. (PSI-WYBR00679). Apparently the same problems were identified for the Pitkin II Trust. In September 2004, the Pitkin II Trust was voided by its trustee and unwound, and the original Pitkin Trust was purportedly reconstituted as if its assets had never been moved into a new trust. (PSI-WYBR00679). The same was done by the trustees of the Castle Creek International Trust, which was purportedly reconstituted as if it had never been merged into Pitkin II. (PSI00059906; PSI00135542-51). In October, the same procedure was followed for the Bulldog II Trust. The trustees voided the Bulldog II Trust and then purported to reconstitute the original Bulldog Trust, Lake Providence International, and Delhi International Trusts as if they had never disappeared four years earlier. (PSI-WYBR00718-20).

By the end of 2004, all of the assets that had been removed from the Bulldog and Pitkin Trusts in 2000, were allegedly restored to the trusts that had originally transferred them. At the same time, the Rule Against Perpetuity defect identified in 1998, which applied to both the Bulldog and Pitkin Trusts, remained unaddressed. It is unclear what steps, if any, have since been taken to resolve this defect in the 1992 Bulldog and Pitkin trusts.

The steps taken by the offshore trustees to create, merge, void, and reconstitute trusts related to the Wyllys raise numerous legal issues. U.S. taxpayers who set up transactions in one way, and discover later that another way would have reduced their taxes, are not usually permitted by the tax code to reconstruct their past actions. In the Isle of Man,

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<sup>620</sup> 10/6/03 document entitled, “Bulldog Trust” prepared by David Harris, managing partner of IFG (PSI00135569-70).

however, the offshore trustees appeared to have been attempting to achieve just that result.<sup>621</sup>

**Affiliate and Beneficial Ownership Issues.** Still another example of offshore trustee deference to the Wyls and their representatives is the conduct of the offshore trustees when confronted with questions regarding compliance with U.S. law. As explained in later Report sections, in 2001, Lehman Brothers began to question whether one of the offshore corporations, Devotion, should be treated as a corporate affiliate of Michaels Stores due to the involvement of Sam Wyly with both companies.<sup>622</sup> Devotion took the position that it was not an affiliate subject to trading restrictions under U.S. securities law, even though the Wyls and their representatives were directing Devotion's securities transactions. The offshore service providers, through their nominee directors and officers, presumably authorized Devotion to take that position and to use a law firm, Meadows Owens, to represent its position in discussions with Lehman's legal counsel. After Lehman tentatively reached the judgement that Devotion was an affiliate of Michaels Stores, Devotion switched its account to Bank of America, again at the direction of the Wyls.<sup>623</sup>

In 2003, a clearing broker for Bank of America began raising questions about transactions engaged in by the Wyly-related offshore entities and asked for the names of the beneficial owners behind the offshore corporations.<sup>624</sup> For more than a year, the offshore trustees refused to provide the information, even though Bank of America was required to obtain it under U.S. anti-money laundering law. Their refusal was apparently a result of the Wyls' reluctance to document the family's specific connections to the offshore corporations.

**Fleeing the Jurisdiction.** One last example. In 2000, after attending a series of meetings with the IOM trustees, Ms. Robertson sent the following message to Sam and Charles Wyly:

"Seems to be concern expressed by the trustees that within a matter of years that there will be further regulation, which

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<sup>621</sup> As mentioned earlier, none of the Isle of Man offshore service providers would agree to be interviewed by the Subcommittee, so that the Subcommittee was unable to obtain their explanations for these actions.

<sup>622</sup> See Report section on Converting U.S. Securities into Offshore Cash, below.

<sup>623</sup> For more information about how the offshore entities moved their accounts from Lehman to Bank of America, see Report section on Converting U.S. Securities into Offshore Cash, below.

<sup>624</sup> See Report section on Hiding Beneficial Ownership, below.



might requir[e] submission of audited financials and access to trust documents. Bester's (Trident) solution was to hire a 'lawyer' custodian to hold the trust deeds, which disclose beneficial ownership. The lawyer would be instructed by the protectors and the trustee not to release the trust deeds to anyone without joint consent. This would slow the process of delivery of the trust deeds down, giving the ability to flee the jurisdiction if it was deemed necessary."<sup>625</sup>

According to this document, one of the offshore trustees, Trident, proposed a plan to delay responding to a potential document request by IOM law enforcement and expressed confidence that IOM professionals would be willing to carry it out, in order to give the client an opportunity to "flee the jurisdiction." This document suggests the offshore trustees went beyond implementing trust protector recommendations and proposed means to conceal the beneficial ownership of the trusts and corporations.

#### **(f) Analysis of Issues**

The fiction maintained by the Wyly-related offshore trusts was that they functioned as independent legal entities exercising independent control over the trust assets. In fact, the trust protectors selected by the Wyls continually conveyed specific decisions made by the Wyls and their representatives about how trust assets should be handled, and the offshore trustees consistently did what the trust protectors asked them to do. Based on the documents and other information it obtained, the Subcommittee saw no evidence, in thirteen years, that the offshore trustees initiated investment decisions or committed trust assets on their own.

Some of the conduct engaged in by the offshore service providers raise legal and ethical issues. Some of the offshore service providers, for example, became directors of a shell lender that issued pass-through loans to and from Wyly interests, created trusts to circumvent SEC reporting requirements, set up "strawman" foreign grantor trusts, permitted defective trusts to continue operating for years, apparently backdated trust agreements or altered them without disclosing that the alterations had been made, and refused to disclose to U.S. securities firms the names of the beneficial owners behind the offshore trusts and corporations, despite legal requirements for disclosure. These and other activities offer additional evidence that the offshore service providers

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<sup>625</sup> 5/12/00 memorandum from Ms. Robertson to Sam and Charles Wyly and others on "Isle of Man Trip" (MAV008060-63).

were willing to and did cede direction of the offshore trust assets to the Wyllys and their representatives, and took a wide range of actions to assist them.

## **(2) Transferring Assets Offshore**

Assets can be transferred offshore in a number of ways. In this case history, the Wyly assets were transferred offshore in three groups of transactions, several years apart. The first group took place in 1992, when the initial offshore trusts were established. The second group took place in 1996, after the foreign grantor trusts were established. The third group took place in 1999 and 2002, surrounding the 2000 sales of Sterling Software and Sterling Commerce. On the first two occasions, the primary mechanism used to move assets offshore were stock option-annuity swaps, in which millions of stock options and warrants were transferred to 20 offshore corporations in exchange for 20 annuity agreements promising to make payments to the Wyllys years later. In the third instance, Sam and Charles Wyly transferred millions of stock options directly to several offshore corporations in return for cash. Altogether, from 1992 to 2002, about 17 million stock options and warrants, representing at least \$190 million in compensation, were transferred offshore.

All 17 million stock options and warrants transferred offshore had been provided to Sam and Charles Wyly by Michaels, Sterling Software, or Sterling Commerce as compensation for services performed. Wyly legal counsel took the position that the Wyllys did not have to pay any income tax on most of this compensation at the time it was sent offshore, because the Wyllys had exchanged most of the stock options and warrants for annuity agreements of equivalent value. Wyly legal counsel advised further that the securities had been transferred to independent third parties, even though the corporations who received the securities were owned by trusts established by or for the benefit of the Wyllys and allowed the Wyllys and their representatives to direct how the securities should be handled. Wyly legal counsel also advised that when the offshore corporations exercised the stock options, the stock option gains did not have to be reported as Wyly income, despite a long-standing IRS requirement that when stock options are transferred to a related party, any stock option gains must be attributed to the original stock option holders as compensation income. Instead, Wyly legal counsel advised that the Wyllys were liable for taxes only if and when they actually received annuity payments from the offshore corporations years later. In the meantime, legal counsel advised that the Wyllys could transfer their stock option compensation offshore tax-free. This untaxed

compensation provided the seed money that enabled the Wyly-related offshore entities to initiate an extensive investment effort.

The stock option-annuity swaps used in this case history sought to manipulate the unusual tax status of stock options, which are virtually the only type of compensation that is not routinely taxed during the year when received, but is usually taxed during the year in which the stock options are exercised, often years after receipt. The swaps attempted to take advantage of this delay in taxation by transferring the stock options offshore to purportedly independent entities; the Wyls and their representatives then convinced the corporations that originally issued the options not to report any compensation when those offshore entities exercised the options. A number of U.S. executives attempted to defer taxation on their stock option compensation by transferring their options to other persons and entities in various types of transactions. In 2003, the IRS announced that it considered some of these stock option transactions to be potentially abusive tax shelters and offered to settle the tax liability of persons who participated in them with reduced penalties. The Wyls chose not to participate in this settlement initiative.

#### **(a) Stock Options in General**

In the United States, over the past ten years, stock options have commonly provided 50 percent or more of the compensation awarded to chief executive officers of publicly traded companies.<sup>626</sup> They are also commonly used to compensate the directors of a public company.

Stock options give the stock option holder the contractual right to purchase company stock at a fixed price, called the “strike price,” for a designated period of time. Frequently, the strike price equals the price that the stock is trading on a public stock exchange on the day the stock option is granted. The stock option typically guarantees that the stock option holder can buy the company stock at the designated strike price for a period of years. The expectation is that the executive will then work to increase the company stock price, not only to build a stronger company, but also to increase the value of the executive’s personal stock option holdings.

Some stock options do not permit the stock option holder to immediately purchase the company stock. Instead, they require the

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<sup>626</sup> See, e.g., “Special Report: Executive Pay,” *Business Week* (4/15/02); “Special Report: Executive Pay,” *Business Week* (4/19/99)(“Long-term compensation – mostly from exercised options – made up 80% of the average CEO’s pay package, up from 72% in 1997.”).

stock option holder to remain with the company for a designated period of time, such as two or three years, before the stock option “vests” and the executive can “exercise” it to buy the company stock. This vesting period is used to encourage the executive to remain with the company.

In some cases, stock options lose value, because the company stock price falls below the strike price. In such cases, some companies “reprice” the stock options, lowering the strike price so that the executive can profitably purchase the company stock, even though the public stock price has decreased. The SEC discourages such “repricing,” since it rewards corporate executives at the expense of investors left holding the higher priced shares.<sup>627</sup>

Historically, compensatory stock options were typically nontransferable, meaning the executive given the stock option was not permitted to transfer it to a third party.<sup>628</sup> The purpose of this restriction is to preserve the incentives for the executive to remain with the company during the stock option’s vesting period and work to increase the company stock price; both employee incentives are reduced if the stock option were transferred to an outside party. Despite this general practice, some companies have allowed stock options to be transferred with the permission of the company’s board of directors; a few have allowed executives to transfer their stock options at will with notice to the company. In addition, in 1996, the SEC relaxed provisions that had made stock option transfers subject to Rule 16 insider trading restrictions; the new rules exempted from Rule 16 all securities provided by an issuer to an officer or director if certain conditions were met, including requiring any stock options to be held for at least six months from the time of award.<sup>629</sup>

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<sup>627</sup> See 17 C.F.R. §229.402(I) (SEC rule requiring any company that reprices an option during the fiscal year to include a chart in its proxy statement showing all option repricings for the prior 10 years).

<sup>628</sup> See, e.g., “Transferable Stock Options: A Complex but Valuable Estate Planning Opportunity,” Edward E. Bintz, 11 No. 8 Insights 15 (August 1997) (“Historically, most stock options granted to executives of publicly traded corporations have been nontransferable, generally in order to comply with requirements of Rule 16b(3)” of the Securities Exchange Act of 1934).

<sup>629</sup> 17 C.F.R. § 240.16b-3. This rule change was proposed in 1994, modified in 1995, and finalized in 1996. SEC Release No. 34-34514 (August 10, 1994), 59 F.R. 42449; SEC Release No. 34-36356 (October 11, 1995), 60 F.R. 53832; SEC Release No. 34-37260 (May 31, 1996), 61 F.R. 30376. Creating a Rule 16 exemption for employee stock options was part of an overall relaxation of SEC rules related to stock options. The SEC explained the changes in part by saying that compensation transactions between a corporation and its officers and directors did not involve the kind of market risks that Section 16b was intended to discourage.

Compensatory stock options are taxed under Section 83 of the Internal Revenue Code. This section, which codified a longstanding IRS position, provides that stock options are generally not taxed when granted, but are instead taxed when exercised.<sup>630</sup> When exercised, the difference between the strike price paid by the option holder for the stock and the market price of the stock on the day of the exercise is taxable as ordinary income to the stock option holder. In addition, under Section 83(h), the corporation that granted the stock option is allowed to take a “mirror” deduction for the compensation included by the executive in his or her gross income at the time of exercise.

Treasury regulations in effect since 1978 provide that, if a compensatory stock option were sold to a third party in an arm’s-length transaction, the stock option holder must treat the amount received for the options at that time as taxable compensation income.<sup>631</sup> If the sale were to a related party, however, the transfer would not be considered a taxable event; instead, when the stock options were later exercised by the related party, any profit between the option’s strike price and the stock’s market price at the time of exercise would be attributed as compensation to the person who was originally awarded the stock option and who would then be required to pay tax on that income.<sup>632</sup> The purpose of this requirement is to prevent sham stock option sales to related parties for less than fair value.

Beginning in the 1990s, some accounting firms began selling a tax shelter to U.S. corporate executives to delay or eliminate the payment of tax on stock option compensation.<sup>633</sup> In this tax shelter, an executive typically transferred compensatory stock options to a related person, such as a family member or an entity controlled by family members such as a family-related partnership or corporation. In exchange, the related person typically promised to pay the executive an amount equal to the stock option’s value, using a long-term, unsecured promissory note or some other unsecured, deferred payment plan promising future payments, often 20 or 30 years in the future. Often the related person had few, if any, assets other than the transferred stock options. The tax shelter promoters claimed that, because no payment was made on the

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<sup>630</sup> Treas. Reg. § 1.83-7. See generally, *Commissioner v. LoBue*, 351 U.S. 243 (1956). Special taxation rules apply to certain “statutory” stock options, that meet specific tax code requirements, but these types of options were not used in this case history. See 26 U.S.C. § 421.

<sup>631</sup> Treas. Reg. § 1.83-7(a), T.D. 7554 (7/24/78).

<sup>632</sup> *Id.* See also private letter rulings, PLR 9349004 (6/8/93); and PLR 9722022 (2/27/97).

<sup>633</sup> See IRS Notice 2003-47, “Transfers of Compensatory Stock Options to Related Persons.”

transfer date to the executive, the stock option transfer was not a taxable event, and no tax was due until actual payment of the promised sums in the future. In the meantime, the related person could exercise the stock options, buy and sell the company stock, and, if the related person were located in an offshore tax haven, invest the cash tax-free.

For the tax shelter to work, however, the corporation that provided the stock option to the U.S. executive had to assist the transaction. For example, the corporation had to allow normally nontransferable stock options to be transferred by the executive to the related person. The corporation also had to allow the related person to exercise the options and take ownership of the company stock. In addition, the corporation had to agree not to issue a Form 1099 or W-2 reporting compensation to the executive from the stock option exercise, and give up the corporate deduction available to it for the stock option compensation on the date of exercise. These actions typically represented an economic hardship to the corporation since it had to forego a valuable tax deduction for the stock option compensation. Nevertheless, many corporate executives were able to convince their corporations to go along.

In 2003, the IRS concluded that this executive stock option transaction had no economic substance apart from tax avoidance, and announced that it considered it a potentially abusive tax shelter.<sup>634</sup> In 2005, over 100 executives and corporations accepted an offer by the IRS to settle possible tax liability and penalties related to the executive stock option tax shelter by agreeing to pay back taxes on the stock option compensation, interest, and a reduced amount of penalties.<sup>635</sup> The IRS calculated that U.S. corporate executives had used the stock option tax shelter to avoid reporting nearly \$1 billion in taxable income.<sup>636</sup>

Sam and Charles Wyly used transactions similar to those described in the IRS notice to move their assets offshore. Each brother had

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<sup>634</sup> *Id.* The Notice deemed these types of stock option transfers to related persons to be a “listed transaction” under IRS Section 6011 and IRS Tax Regulation 1.6011. The IRS also issued temporary and proposed regulations requiring such stock option compensation to be reported as taxable income to the original stock option holder. These regulations were finalized in 2004. See 2004-2 C.B. 460.

<sup>635</sup> See 2/22/05 IRS Announcement 2005-19, “Executive Stock Options Settlement Initiative.” This settlement, which was offered to both individual and corporate taxpayers who participated in the executive stock option tax shelter, required executives to include 100 percent of their stock option compensation in income, and pay back income and employment taxes, plus interest and a 10 percent penalty. The IRS later reported that it had identified 114 executives and 42 companies who participated in the abusive tax shelter, of which 95 individuals and 33 companies chose to participate in the settlement or resolved their tax liability through the audit process. 7/11/05 IRS press release, “Robust Response of Executive Stock Option Initiative.”

<sup>636</sup> 7/11/05 IRS press release, “Robust Response of Executive Stock Option Initiative.”

millions of compensatory stock options that had been granted to him by the three publicly traded companies they founded or expanded, Michaels Stores, Sterling Software, and Sterling Commerce, for which, at various times, the brothers served as directors, officers, or large shareholders.<sup>637</sup> In 1992 and 1996, with the assistance of legal counsel, the Wyly brothers arranged for the transfer of many of these stock options to the offshore entities examined in this Report. In return, they accepted, not promissory notes, but private annuities.

#### **(b) Private Annuities in General**

Annuities are, in essence, a contract. The party buying the annuity provides cash or property in exchange for a contractual promise that the party providing the annuity will make payments to a named “annuitant” over a designated period of time. In most cases, the cash or property provided for the annuity is invested, and the expected investment return on those assets is intended both to fund the annuity payments and generate a profit for the party providing the annuity.

Annuities are flexible and can be designed to fulfill particular needs. For example, the annuitant may or may not be the same person who contributes the annuity assets. The promised annuity payments can be for a fixed term of years or for a term measured by the life of the annuitant. The payments can commence immediately or on a future date. The payments can be a fixed amount or an amount tied to the expected or actual investment return on the annuity assets. The annuity can be obtained from a commercial insurance company that sells annuity policies, or from someone that is not in the business of selling such policies, in which case it is often deemed a “private annuity.”

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<sup>637</sup> At Michaels, Sam and Charles Wyly have been directors of the company from 1984 to the present time, including periods as Chairman and Vice Chairman of the Board. The Wyly Group was a large shareholder (holding five percent or more of the company stock) from 1984 until 2001, if only domestic stock holdings are counted, and through at least 2005, if offshore holdings are also counted. Sam Wyly served as Chief Executive Officer of Michaels Stores until April 1996. See 4/7/05 amended Schedules 13D filed by the Wyls regarding Michaels Stores. At Sterling Software, Sam and Charles Wyly were directors of the company from its inception in 1981, until its sale in 2000, including periods as Chairman and Vice Chairman, and the Wyly Group was a large shareholder from 1992, until the company’s sale in 2000. See Schedule 13Ds filed by the Wyls regarding Sterling Software. At Sterling Commerce, Sam and Charles Wyly were directors of the company from its inception in 1995, until its sale in 2000. Because no amended 13D filings have been filed with respect to Sterling Commerce securities held by the Wyly Group and the Wyly-related offshore entities, it is difficult to calculate their ownership over time. An S-3/A Form filed by Sterling Commerce, however, reports that as of 10/31/96, Sam and Charles Wyly and the Little Woody International and Crazy Horse Trusts collectively owned nearly 9 million shares and options, or nearly 12 percent of the total shares outstanding. See 11/1/96 S-3/A Form filed by Sterling Commerce at 4.

Annuities are taxed under Section 72(a) of the Internal Revenue Code. A primary tax benefit associated with annuities is that capital gains on annuity assets are not taxed until the annuity payments are due. At that time, annuity payments are generally included in the recipient's income as they are received, but not all of the annuity payment is taxable. Because some of each payment represents a return of part of the assets originally provided for the annuity, the recipient does not have to pay tax on that part. Instead, the recipient pays tax only on the increase in value.

A special rule applies to annuities purchased with appreciated assets, such as stock or real estate, instead of cash. Normally, when an appreciated asset is exchanged for something of value, the seller has to pay tax on any gain attached to that asset at the time of the exchange. But in the case of appreciated assets exchanged in an arm's-length transaction for a deferred private annuity that is measured by the life of a person, the IRS generally allows the seller of the appreciated assets, under Code provisions dealing with the sale or exchange of capital assets, to avoid reporting a taxable gain at the time of exchange, on the theory that it is impossible to accurately determine the value of the annuity at that time.<sup>638</sup> The reporting of the gain is instead deferred until the annuity payments begin.<sup>639</sup>

The tax code limits the tax benefits provided by annuities to only those taxpayers who are natural persons. Under Section 72(u), an entity that is not a natural person, such as a corporation or trust, cannot defer tax on any annuity it holds, unless it is holding the annuity as an agent for a natural person.<sup>640</sup>

Annuities are no stranger to tax fraud. One common tactic has been for the person who purchased the annuity and supplied the annuity assets to immediately regain control of the assets by "borrowing" them

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<sup>638</sup> This deferral is available only when the payment of the annuity is unsecured. A secured annuity has a more predictable value, so the gain would be immediately reportable at the time of the exchange.

<sup>639</sup> The IRS has interpreted Section 72 to permit a part of the income portion of each payment to be taxed at capital gain rates, under a formula that estimates the portion of income that represents the capital gain on the property and the portion that represents ordinary income. Rev. Rul. 69-74, 1969-1 C.B. 43. The result is that each annuity payment under an annuity bought with appreciated property is allocated three ways: one portion represents the recovery of the original investment which is non-taxable, another portion represents the profit on the appreciated property which is taxed at capital gains rates, and the remainder represents the gain from the investment of the assets which is taxed as ordinary income.

<sup>640</sup> A corporation or trust that is not acting as an agent for a natural person must pay tax on the full cash surrender value of the annuity contract as of the end of the year, plus any distributions it received during the year.



back from the party providing the annuity. The tax code views such loan arrangements as evidence that the annuity itself was a sham to obtain a tax deferral on the investment assets. To prevent this type of sham as well as to prevent the diminishing of assets set aside for retirement income, Section 72(e) deems any “loan” that uses annuity assets as immediately taxable ordinary income. These loans may also be considered by the IRS as evidence that the annuities were themselves shams that should be disregarded for tax purposes.

In the Wyly case history, about 11 million stock options were exchanged for private annuities provided by offshore corporations owned by the Wyly-related offshore trusts.

### **(c) 1992 Stock Option-Annuity Swaps**

The first transfer of Wyly-related assets offshore took place in 1992. Nearly 3 million stock options and warrants, valued on paper by the parties at about \$41.8 million, were transferred to ten newly-established, offshore corporations. An elaborate transfer strategy had been developed by David Tedder and Michael Chatzky, the attorneys who first advised the Wyllys to move assets offshore.<sup>641</sup> Essentially, the strategy had four parts: (1) establishing ten Isle of Man (IOM) corporations and ten Nevada corporations, all of which were shell operations that had no employees or offices of their own; (2) transferring the nearly 3 million stock options and warrants from Sam and Charles Wyly to the Nevada corporations in exchange for private annuity agreements; (3) assigning the securities and annuity agreements from the Nevada corporations to the IOM corporations; and (4) terminating the Nevada corporations. The end result was that the ten offshore corporations took possession of the nearly 3 million stock options and warrants.

**Shell Corporations.** The first step in the Tedder-Chatzky plan was the creation of shell corporations both offshore and in the United States. In March 1992, the first set of Wyly-related offshore trusts and their subsidiaries were established.<sup>642</sup> The Bulldog Trust, whose grantor was Sam Wyly, formed multiple IOM corporations, six of which were used in the 1992 stock option-annuity swaps.<sup>643</sup> The Pitkin Trust, whose

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<sup>641</sup> Subcommittee interviews of Ms. Robertson (3/9/06) and Mr. French (4/21/06). See also written legal opinions cited below.

<sup>642</sup> For more detail, see Overview of Wyly Offshore Operations, above.

<sup>643</sup> The six IOM corporations were East Baton Rouge Ltd., East Carroll Ltd., Morehouse Ltd., Richland Ltd., Tensas Ltd., and West Carroll Ltd.

grantor was Charles Wyly, also formed multiple IOM corporations, four of which were used in the 1992 stock option-annuity swaps.<sup>644</sup>

During March and April 1992, Ms. Robertson worked with a U.S. company formation agent to establish ten Nevada corporations, each of which had an identical name to one of the ten IOM corporations.<sup>645</sup> Ms. Robertson served as the sole director as well as the president, secretary, and treasurer for all ten Nevada corporations.<sup>646</sup> Each of the corporations was owned by the foreign corporation bearing the same name.<sup>647</sup> When asked why the Nevada and IOM corporations shared names, Ms. Robertson indicated that she thought legal counsel had designed it as a device intended to guide the flow of assets from the U.S. entities to the offshore entities and to avoid any commingling or mixup over ownership of particular stock options and warrants.<sup>648</sup>

**Initial Asset Transfers to Nevada.** In April 1992, in ten separate transactions, Sam and Charles Wyly transferred to the ten Nevada corporations a total of one million options and 983,589 warrants to buy Sterling Software stock, as well as 865,000 options and 100,000 warrants to buy Michaels stock.<sup>649</sup> In exchange, the ten Nevada corporations provided ten private annuity agreements which pledged to

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<sup>644</sup> The four IOM corporations were Little Woody Ltd., Maroon (later renamed Rugosa) Ltd., Roaring Creek Ltd., and Roaring Fork Ltd.

<sup>645</sup> The ten Nevada corporations were named: East Baton Rouge Ltd., East Carroll Ltd., Morehouse Ltd., Richland Ltd., Tensas Ltd., West Carroll Ltd., Little Woody Ltd., Maroon Ltd., Roaring Creek Ltd., and Roaring Fork Ltd.

<sup>646</sup> See, e.g., 3/27/92 Articles of Incorporation of Little Woody Limited filed with the State of Nevada (PSI00059447-50); 3/31/1992 Written Consent of Sole Director of Little Woody Limited (PSI00094344-45); 4/15/1992 Written Consent of Directors of Little Woody Limited (PSI00094347).

<sup>647</sup> See, e.g., 4/22/92 "Receipt" showing each IOM corporation paid \$10 cash to purchase 1,000 shares of the corresponding Nevada corporation (PSI00093483); 2/28/92 letter from Pratter, Tedder & Graves to Sam Wyly describing the 1992 transfers at 3 (PSI-WYBR00219-43, at 221) ("It is our further understanding that the domestic corporation intending to purchase the Securities in exchange for the issuance of the private annuity is wholly owned by a foreign corporation which is wholly-owned by a foreign nongrantor trust.").

<sup>648</sup> Subcommittee interview of Ms. Robertson (3/9/06). The matching names are also evidence of a strategy to move the stock options and warrants through U.S. intermediaries to offshore entities.

<sup>649</sup> See chart entitled, "Transferring Assets Offshore," prepared by the Subcommittee Minority Staff, summarizing the offshore transfers of Wyly assets. Sterling Commerce was not incorporated until 1995, and played no role in the 1992 transactions.

begin making annuity payments to Sam, Charles, or Charles Wyly's wife in the year in which each turned 65 years of age.<sup>650</sup>

To transfer the stock options and warrants to the Nevada corporations, the Wyls obtained the cooperation of both Sterling Software and Michaels, which controlled the ownership records for these securities. Prior to 1992, the Sterling Software and Michaels stock option plans and individualized stock option agreements with Sam and Charles Wyly had made the stock options awarded under them nontransferable to any person, except through the option holder's estate.<sup>651</sup> Despite these provisions, in connection with the 1992 stock option-annuity swaps, Sterling Software and Michaels issued formal consent documents which stated that, "notwithstanding such restriction on transfer" in the original stock option agreements, the companies consented to the Wyls transferring their options to the offshore entities.<sup>652</sup> Beginning in 1992 and in the years afterward, the Sterling Software, Michaels, and Sterling Commerce stock option agreements with the Wyls replaced the nontransferability provision with a clause giving the option holder unilateral authority to transfer the stock options

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<sup>650</sup> See Private Annuity Agreements involving East Baton Rouge (PSI00086096-106); East Carroll (PSI00132954-64); Morehouse (PSI00133169-85); Richland (PSI00133232-48); Tensas (PSI00009472-88); West Carroll (PSI0133535-51); Little Woody (PSI00133007-17); Maroon (PSI00009427-37); Roaring Creek (PSI00133289-305); and Roaring Fork (PSI00133370-84).

<sup>651</sup> See, e.g., "Sterling Software Inc. Non-Statutory Stock Option Plan," Section 10 (PSI00099859-62); "Michaels Stores Inc. Non-Statutory Stock Option Plan," Section 13 (PSI00083962-64); 9/16/86 Sterling Software "Non-Statutory Stock Option Agreement" with Charles Wyly, Section 6 "Non-Transferability of Options" (PSI00086021-24 at 22) ("This Option is not assignable or transferable ... otherwise than by will or the laws of descent and distribution and during the lifetime of the Participant may only be exercised by him."); and with Sam Wyly (HST\_PSI037049-52); 8/22/90 Michaels "Non-Statutory Stock Option Agreement" with Sam Wyly, Section 6 "Non-Transferability of Option" (PSI00132916-19).

<sup>652</sup> See, e.g., 4/17/92 Sterling Software "Consent to Transfer of Non-Statutory Stock Option" with Charles Wyly (PSI00133019); 4/14/92 Michaels "Consent to Transfer of Non-Statutory Stock Option" with Sam Wyly (PSI00132913-14). Michaels general counsel told the Subcommittee that Mr. French had orally informed him in 1992, that the Michaels Board of Directors had approved the 1992 stock option transfers to the offshore entities. Subcommittee interview of Mark Beasley (6/7/05). Mr. Beasley noted that the Board never placed this approval in writing or mentioned it in the Board minutes. Mr. French told the Subcommittee that he could not recall whether or not he had conveyed this information to Mr. Beasley in 1992. Subcommittee interview of Mr. French (4/21/06). See also, e.g., 4/20/92 letter from Jackson & Walker to Ms. Robertson (MSNY025211-12) (enclosing multiple documents in which Sterling Software and Michaels consented to stock option transfers from the Wyls to the Nevada corporations, and stating "[a]fter we sign up the assignments from the Nevada corporation[s] to the Isle of Man corporations on Wednesday, we can coordinate having new Sterling Series B warrants and Michaels warrants executed in the name of the appropriate Isle of Man corporations").

to a third party, with five days notice to the company.<sup>653</sup> Upon receiving such notice, the companies typically issued a formal document amending the relevant stock option agreements to reflect the new ownership; on occasion, the companies even waived the five-day notice requirement.<sup>654</sup>

**1992 Annuity Agreements.** All ten of the 1992 annuity agreements used the same format and contained the same provisions with numerous identical passages. Their key provisions can be summarized as follows. Each agreement identified the number of stock options and warrants being contributed by the annuitant and specified a present fair market value for them.<sup>655</sup> Each agreement promised the annuitant would receive annuity payments equal to the fair market value of the securities plus an 8.4 percent per annum interest rate, compounded each year from the date the securities were contributed until the date of the first payment.<sup>656</sup> Each agreement stated that the annuity payments would begin on the date the annuitant reached the age of 65, would continue for the life of the annuitant, and would be paid once per year.

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<sup>653</sup> See, e.g., 11/23/94 Sterling Software “1992 Non-Statutory Employee Stock Option Agreement” with Sam Wyly, Section 6 (HST\_PSI004827-30); 8/19/92 “Michaels Stores, Inc. Non-Statutory Stock Option Agreement” with Charles Wyly, Section 6 (MSNY015795-99, at 97); 2/12/96 “Sterling Commerce, Inc. 1996 Stock Option Plan Stock Option Agreement” with Sam Wyly, Section 6 (PSI00085949-52).

<sup>654</sup> See, e.g., 12/21/95 Sterling Software “Amendment to Non-Statutory Stock Option Agreement” (PSI00029394-95)(transferring stock option ownership from Sam Wyly to Crazy Horse Trust); 12/30/95 Sterling Software “Amendment to Non-Statutory Stock Option Agreement” (PSI00132065-66)(transferring ownership from Charles Wyly to Woody International Trust); 9/13/96 Sterling Commerce “Third Amendment to Stock Option Agreement” (PSI00085953-55)(showing transfer of ownership from Sam Wyly to the Crazy Horse Trust and then to Moberly); 12/29/95 Michaels “Amendment to Non-Statutory Stock Option Agreement” (PSI00063573-74)(transferring ownership from Charles Wyly to Maroon Creek Trust); 7/23/02 Computer Associates “Agreement to Transfer Stock Options and Amend Stock Option Agreement” (transferring stock option ownership from Charles Wyly to Quayle and waiving five-day notice period), exhibit to 7/26/05 deposition of Sam Wyly, Sam Wyly and Ranger Governance, Ltd. v. Computer Associates International Inc. And Sterling Software, Inc., Civil Action No. 3:04-CV-1984-B (N.D. Texas).

<sup>655</sup> See, e.g., 4/13/92 Private Annuity Agreement involving East Baton Rouge Ltd. (Nevada) (PSI00086096-106), at Schedule A (listing contributed assets as 375,000 options to buy Michaels stock) and Section 2.1 (“Agreement as to Value” indicating that the parties agreed that the value of the 375,000 stock options was \$6,609,375).

<sup>656</sup> *Id.* at Section 2.4(a) and (b). This interest rate matched the rate then recommended by the IRS. Each month, the IRS publishes recommended interest rates for use in annuities to establish arm’s-length transactions; the recommended rate for April 1992 was 8.4 percent. Rev. Rul. 92-23, 1992-1 Cum. Bull. 292. See also five letters, dated 4/30/92, from a Texas actuarial and consulting firm, Milliman & Robertson, Inc., to either Sam or Charles Wyly (PSI00040155-56, 69-70, 77-78, 81-82, 85647-48), explaining how the annual payment amount was calculated for five of the 1992 annuities. Each of these letters, using the same format and virtually identical passages, identified the particular factors and IRS-recommended valuation tables and interest rates used to calculate the annual payment amount that would have to be made under each annuity. The letter on the East Baton Rouge annuity, for example, determined that the annual annuity payment would be in the amount of \$1,536,342.

In addition, each agreement required the annuitant to give up all ownership interest in the contributed securities, acknowledge that no collateral secured the annuity payments, and accept the “risks attendant with respect to the acquisition of an unsecured high risk private annuity.”<sup>657</sup> Each agreement required the corporation providing the annuity to make the promised annuity payments whether or not the contributed securities produced sufficient earnings.<sup>658</sup>

The collective dollar value of the stock options provided in exchange for the private annuities, according to the fair market value specified in each of the ten annuity agreements, totaled about \$41.8 million.

**From Nevada to the Isle of Man.** Within a week of executing the annuity agreement – often on the same day – each of the Nevada corporations assigned both the private annuity agreement and the contributed assets to its corresponding IOM corporation, bearing the same corporate name.<sup>659</sup> So, for example, East Baton Rouge Ltd. in Nevada transferred its annuity agreement and assets to East Baton Rouge Ltd. in the Isle of Man.<sup>660</sup> By the end of April 1992, nearly 3 million stock options and warrants had moved offshore in exchange for private annuity agreements payable to the Wyllys.

When asked why the Wyllys entered into annuity agreements with the Nevada corporations instead of the IOM corporations that ultimately held the agreements, none of the persons interviewed by the Subcommittee could explain the reasoning other than to say they were following the instructions of legal counsel, David Tedder and Michael Chatzky.<sup>661</sup> In any event, the Nevada corporations appear to have served as convenient, U.S.-based intermediaries.

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<sup>657</sup> *Id.* at Sections 1.1(d) and 3.1. Each private annuity agreement refers to itself as “high risk,” presumably because the annuity payments are unsecured, no payments would be provided if the annuitant died before the payment due date, and, at the time the agreement was signed, the offshore corporation possessed no assets other than the stock options provided by the Wyllys.

<sup>658</sup> *Id.* at Section 6.1.

<sup>659</sup> See, e.g., 4/13/92 “Assignment and Assumption Agreement” between Roaring Fork Ltd. (Nevada) and Roaring Fork Ltd. (IOM) (PSI00128830-32); 4/15/92 “Assignment and Assumption Agreement” between Tensas Ltd. (Nevada) and Tensas Ltd. (IOM) (PSI00130828-30).

<sup>660</sup> See, e.g., 4/15/92 “Assignment and Assumption Agreement” between East Baton Rouge Ltd. (Nevada) and East Baton Rouge Ltd. (IOM) (MSNY010493-95).

<sup>661</sup> Both Ms. Robertson and Mr. French, for example, told the Subcommittee that they did not know why the Nevada corporations were used.

**1992 Legal Opinions.** On February 28, 1992, a California law firm associated with Mr. Tedder, called Pratter, Tedder & Graves, issued three almost identical legal opinion letters to Sam, Charles, and Charles Wyly's wife opining that they could defer any payment of tax on the stock option compensation that was exchanged for private annuities.<sup>662</sup> On April 2, 1992, the firm issued ten legal opinion letters, almost identical to each other, to the ten Nevada corporations concluding that their transfers of the annuity agreements and stock options offshore were also nontaxable events.<sup>663</sup>

Each of the legal opinion letters addressed to the Wyls advised that they could defer the payment of any tax on the \$41.8 million in stock option compensation sent offshore in exchange for the private annuities. The letters reasoned that a promise to make lifetime annuity payments had no immediately determinable value, an unfunded and unsecured promise to pay money in the future did not qualify as taxable property, and the stock options themselves had no readily ascertainable fair market value under Section 83 of the tax code, so none of the transactions resulted in an immediate tax liability to the Wyls. The letters also reasoned that, because the value of the private annuity being provided equaled the fair market value of the stock options being contributed in exchange for the annuity, no gift tax would apply. The letters asserted further that the exercise of the stock options would not result in taxable compensation to the original stock option holders, because the stock options had been disposed of in arm's-length transactions.

The legal opinion letters failed to acknowledge or analyze the key issue of whether the stock option transfers were transfers between related parties and, thus, under Section 83 of the tax code, had to attribute any stock option exercise gains as taxable income to the original stock holders, Sam and Charles Wyly. Instead, each letter simply asserted without explanation that the stock options were transferred in arm's-length transactions.

Counsel forwarded copies of the letters addressed to the Wyls to Michaels and Sterling Software, presumably to aid both corporations in reaching a decision not to report any stock option compensation for the

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<sup>662</sup> 2/28/92 letters from Pratter, Tedder & Graves, signed by David Tedder, addressed to Sam, Charles and Caroline D. Wyly (PSI-WYBR00191-269). Mr. French told the Subcommittee that Mr. Chatzky was involved with the drafting of these letters. Subcommittee interview of Mr. French (4/21/06 and 6/30/06).

<sup>663</sup> 4/2/92 letters from Pratter, Tedder & Graves, signed by David Tedder, addressed to the ten Nevada corporations (PSI-WYBR00028-190), except that one signature block for the East Carroll letter is unsigned.

Wyls either at the time the Wyls initially transferred the stock options to the Nevada corporations or later when the offshore corporations exercised those stock options.<sup>664</sup> The evidence indicates that neither Michaels nor Sterling Software, in fact, issued a W-2 or 1099 form reporting the Wyly stock option compensation, either in 1992 or later.<sup>665</sup> Apparently both corporations determined that the stock option-annuity swaps, as represented to them, meant that neither Sam nor Charles Wyly would receive any taxable income from their stock options until the annuity payments began years later.

**Dissolution of Nevada Corporations.** After the annuities were assigned from the Nevada to the IOM corporations, Sam and Charles Wyly transferred their interests in the private annuities to Texas partnerships that each controlled. Sam Wyly transferred his interest to Tallulah Ltd., while Charles Wyly transferred his interest to Stargate Ltd.<sup>666</sup> Several years later, in 1996, the ten Nevada corporations were dissolved.<sup>667</sup>

Together, the evidence shows that the 1992 stock option-annuity swaps were orchestrated by U.S. legal counsel and facilitated by two publicly traded corporations. The swaps began with the Wyls transferring nearly 3 million stock options and warrants with an ascribed value of \$41.8 million to ten newly created corporations in Nevada with no employees, offices, or other assets. In return for these valuable

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<sup>664</sup> See, e.g., 4/9/92 letters from Pratter, Tedder & Graves forwarding the opinions to Michaels and Sterling Software (PSI\_WYBR00191-92; 217-18; 244-45).

<sup>665</sup> Michaels told the Subcommittee that it did not take a tax deduction related to any of the Wyly stock options transferred offshore, foregoing millions of dollars in tax deductions related to this stock option compensation. See also 5/6/05 Notice of Election by Corporation to Participate in Announcement 2005-19 Settlement Initiative, Form 13657, filed by Michaels Stores, Inc. with the IRS (MSNY028653-58). Documents provided by Sterling Software's successor corporation, CA, Inc. (CA), indicate that Sterling Software also did not take a tax deduction for the Wyly stock option transferred offshore. See information provided to the Subcommittee by Sterling Software's successor corporation, CA (7/20/06). See also Treasury Regulation Section 1.83-6(a)(2), which states that a corporation may take a deduction for stock option compensation under Section 83 only if the option holder has included the stock option gains in income, unless the corporation issues a W-2 or 1099 form reporting the compensation to the IRS. Venture Funding Limited v. Commissioner, 110 T.C. 236 (1998), aff'd, 198 F.3d 248 (6<sup>th</sup> Cir. 1999).

<sup>666</sup> See, e.g., series of letters dated 8/31/92, addressed to Sam Wyly from six IOM corporations, East Baton Rouge, East Carroll, Morehouse, Richland, Tensas, and West Carroll (PSI00092593-98) (consenting to his assigning his private annuity interests to Tallulah Ltd.); 7/23/02 letter from Computer Associates to Sam and Charles Wyly (PSI00059890-92) (stating that stock options awarded to Charles Wyly were contributed to Stargate Ltd. which later sold them to Elegance and Quayle).

<sup>667</sup> See, e.g., documents related to the dissolution of Morehouse Ltd. (Nevada) (PSI00093352-61) and Roaring Creek Ltd. (Nevada) (PSI00093401-10).

securities, the Nevada corporations provided unsecured annuity agreements promising to make payments years later. The Nevada corporations then assigned both the securities and annuity agreements to shell IOM corporations with no other assets. Exchanging valuable stock options and warrants in return for unsecured promises by shell corporations to make payments beginning years in the future makes no economic sense, absent the tax considerations. The opinion letters issued at the time suggest that the primary motivation for these transactions was the deferral of U.S. tax on nearly \$42 million in compensation.

#### **(d) 1996 Stock Option-Annuity Swaps**

The second set of offshore transfers of Wyly assets took place in 1996. Again designed by legal counsel, this time Chatzky and Associates, the transfer strategy consisted of essentially three steps: (1) 8.6 million stock options were transferred by Sam and Charles Wyly to seven grantor trusts in the Isle of Man; (2) the seven IOM grantor trusts then transferred the stock options to ten Wyly-related IOM corporations in exchange for private annuities payable to Sam or Charles Wyly; and (3) the IOM grantor trusts were terminated and distributed the annuity agreements to Sam and Charles Wyly. The end result was that the ten IOM offshore corporations took possession of 8.6 million stock options worth at least \$118.4 million. As in 1992, the Wyllys took the position, on advice of counsel, that they did not have to pay taxes on any of more than \$118 million in stock option compensation, either at the time of the transfer or when the stock options were later exercised, but only if and when they received the promised annuity payments years later.

**Initial Asset Transfers to Offshore Trusts.** Seven IOM trusts participated in the 1996 stock option-annuity swaps. One of these trusts had previously existed but was newly amended; the other six were newly created in December 1995 or January 1996.<sup>668</sup> Sam and Charles Wyly were the grantors of all seven.<sup>669</sup> In February and March 1996, in ten separate transactions, Sam and Charles Wyly transferred millions of stock options to the seven IOM grantor trusts, including 2.65 million options to buy Sterling Software stock; 1.35 million options to buy

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<sup>668</sup> The pre-existing IOM trust was the Tallulah International Trust, which was originally established in 1992, and amended and restated in December 1995. (PSI00009785-817) The six newly created IOM trusts were the Arlington Trust, Crazy Horse Trust, Lincoln Creek Trust, Maroon Creek Trust, Sitting Bull Trust, and Woody International Trust. For more information on these trusts, see Appendix 1.

<sup>669</sup> See, e.g., 2/22/96 Private Annuity Agreement involving the Arlington Trust (PSI00093214-28) at §12.1 (“[The Arlington Trust] hereby warrants that it is presently a grantor trust for United States income tax purposes.”). See also IRC 671-79 (grantor trust rules).



Michaels stock; and 4.6 million options to buy Sterling Commerce stock.<sup>670</sup>

**From One IOM Entity to Another.** Once the seven IOM grantor trusts acquired the 8.6 million stock options, they immediately transferred them to ten IOM corporations, all of which were owned by other Wyly-related offshore trusts. In exchange, the ten offshore corporations entered into private annuity agreements with the IOM grantor trusts.<sup>671</sup> Each of these annuity agreements named either Sam or Charles Wyly as the annuitant and specified that the offshore grantor trust was holding the annuity as an agent for that person.

When asked why the Wyllys had transferred their stock options to the IOM grantor trusts instead of transferring them directly to the IOM corporations in exchange for the private annuities, no one interviewed by the Subcommittee could explain the reasoning other than to say they were following the instructions of legal counsel.

As in the case of the 1992 stock option-annuity swaps, the publicly traded corporations that had issued the compensatory stock options to Sam and Charles Wyly facilitated the 1996 transactions. Among other actions, Michaels, Sterling Software, and Sterling Commerce acknowledged the offshore transfers and amended their records to reflect the new ownership of the stock options by the offshore corporations.<sup>672</sup>

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<sup>670</sup> See chart entitled, "Transferring Assets Offshore," prepared by the Subcommittee Minority Staff, summarizing the offshore transfers of Wyly assets. Sterling Commerce was established as a separate corporation in December 1995, and held its initial public offering in March 1996. It issued stock options to its officers and directors, including Sam and Charles Wyly, in February 1996. See Sterling Commerce 3/13/96 10-K filing at Exhibit 10(m) at 1. See also documents related to Sterling Commerce stock option-annuity swaps (PSI00137770)(2/21/96 recommendation by Mr. French to Lorne House for two offshore trusts to establish new offshore corporations to participate in annuity assignments "which we would like to finalize by tomorrow") and (PSI00138087-88)(3/7/96 fax forwarding documents to be signed and returned the same day).

<sup>671</sup> See Private Annuity Agreements between the Arlington Trust and Sarnia Investments Ltd. (PSI00093214-28); between the Crazy Horse Trust and Audubon Assets Ltd. (PSI00093176-90); between the Crazy Horse Trust and Locke Ltd. (PSI00093153-67); between the Crazy Horse Trust and Moberly Ltd. (PSI00042655-69); between the Lincoln Creek Trust and Elegance Ltd. (PSI00084937-51); between the Maroon Creek Trust and Quayle Ltd. (PSI0009370-84); between the Sitting Bull Trust and Devotion Ltd. (PSI00085252-66); between the Tallulah International Trust and Yurta Faf Ltd. (PSI00009502-16); between the Woody International Trust and Elysium Ltd. (PSI00132363-77); and between the Woody International Trust and Soulieana Ltd. (PSI00009453-67).

<sup>672</sup> See, e.g., December 1995 Sterling Software "Amendment to Non-Statutory Stock Option Agreement" involving the Arlington Trust (PSI00092917-18), Crazy Horse Trust (PSI00029394-95), and Woody International Trust (PSI00132065-66); February 1996 Michaels "Second Amendment to Employee Stock Option Agreement" and December 1995 "Amendment to Non-Statutory Stock Option Agreement" involving the Maroon Creek Trust and Quayle (MSNY015790-94), the Woody International Trust and Soulieana (MSNY015807-11,

As before, it appears that none of the corporations sent the IRS a 1099 or W-2 filing reporting Wyly stock option compensation either at the time of the 1996 transfers or when the stock options were later exercised.<sup>673</sup> Apparently, none of the corporations took a corporate deduction for any of the \$116 million in Wyly stock option compensation.<sup>674</sup>

**Michaels Stock Option Repricing.** In addition to facilitating the offshore transfers, Michaels also increased the value of the stock options held by the offshore corporations. On February 22, 1996, Sam and Charles Wyly transferred 1.35 million Michaels options to several offshore trusts. Ten days later, on March 4, 1996, the Michaels board of directors decided to reprice all of its outstanding stock options, lowering the strike price nearly 30 percent, from \$17 to \$12.50.<sup>675</sup> The company justified this repricing as necessary to retain and motivate its executives, but also applied the new strike price to the stock options which, by then, were held by the Wyly-related offshore corporations. These corporations, which were supposedly independent entities, had no need to be retained, motivated, or otherwise rewarded by Michaels. Michaels nevertheless applied the lower strike price to all of the Michaels stock options held offshore, substantially increasing their value.<sup>676</sup>

**1996 Annuity Agreements.** The annuity agreements used in the 1996 stock option-annuity swaps closely paralleled the 1992 annuity

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PSI000132015-16), and the Tallulah International Trust (PSI00063618-19, 26156-57); 3/7/96 Sterling Commerce "Second Amendment to Stock Option Agreement" involving the Crazy Horse Trust and Moberly (PSI00085964-65), and the Woody International Trust and Elysium (PSI00124554-55).

<sup>673</sup> Information provided to the Subcommittee by Michaels, Sterling Software's successor corporation CA, Inc., and Sterling Commerce's successor corporation, SBC Communications.

<sup>674</sup> Michaels later calculated that, by not taking deductions for the Wyly compensation represented by the 1992 and 1996 stock options sent offshore, it gave up deductions exceeding \$20 million. See undated document prepared by Michaels entitled, "Loss of Tax Deductions: Wyly's Foreign Trusts" (MSNY020284)(showing stock option exercises by Wyly-related offshore entities from February 1997 through August 2000, producing stock option profits exceeding \$50 million).

<sup>675</sup> This action was the second time within six months the Michaels board had repriced the company's stock options. Throughout 1994 and 1995, Michaels' stock price had steadily fallen. Its outstanding stock options had accordingly lost value, and by mid-1995, many had strike prices that exceeded the prevailing market price. In response, on 9/28/95, Michaels lowered the strike price on all of its outstanding stock options, replacing strike prices ranging from \$39 to \$20 with a new strike price of \$17. See, e.g., 10/23/96 DEF 14A proxy statement filing by Michaels, at 11. The lower \$17 strike price was applied not only to stock options held by the company's employees, but also to the stock options held by the Wyly-related offshore entities. On 3/4/96, Michaels lowered the strike prices still further. See, e.g., 4/30/97 DEF 14A proxy statement filing by Michaels, at 19.

<sup>676</sup> See, e.g., 7/18/97 document listing repriced options related to Wyly family members (MSNY016018-23).

agreements. They had the same format, almost all of the same provisions, and numerous identical passages.<sup>677</sup> Like the 1992 agreements, the 1996 agreements identified the stock options contributed by the annuitant and provided a fair market value for them. Each used IRS annuity valuation tables and recommended interest rates to calculate the overall value of the annuity and the amount of an annual annuity payment due on a specified date each year. In addition, like the 1992 agreements, the 1996 agreements required the annuitant to give up all ownership interest in the contributed securities, and to accept the “risks attendant with respect to the acquisition of an unsecured high risk private annuity.”<sup>678</sup> The 1996 agreements also required the IOM corporations to make the promised annuity payments whether or not the stock options provided sufficient earnings.<sup>679</sup>

The 1996 annuity agreements differed from the 1992 agreements in a few ways. For example, instead of commencing in the year the annuitant attained the age of 65, the 1996 annuity payments commenced when the annuitant attained 68.<sup>680</sup> Also, the 1996 agreements used a 6.8 percent interest rate per annum, rather than the 8.4 percent in the 1992 annuity agreements, since that was the IRS-recommended interest rate for February 1996.<sup>681</sup> In addition, to meet U.S. tax deferral requirements, each of the 1996 annuity agreements stated that the relevant offshore trust warranted that it was “a grantor trust for United States income tax purposes” and was holding the annuity “as an agent” for a natural person, naming either Sam or Charles Wyly.<sup>682</sup>

**1996 Legal Opinions.** In February and March 1996, Chatzky and Associates issued several legal opinion letters concluding that the 1996 stock option-annuity swaps were not taxable events at the time they occurred.<sup>683</sup> These opinion letters were addressed to the IOM grantor

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<sup>677</sup> Compare, e.g., Private Annuity Agreement involving Tensas Ltd. (PSI00009472-88) with Private Annuity Agreement involving the Arlington Trust and Sarnia Investments Ltd. (PSI00092914-28). The Subcommittee has obtained copies of six of the ten 1996 annuity agreements. All six were virtually identical, except for the names of the parties involved, the list of contributed assets, and the valuations provided for those assets.

<sup>678</sup> See, e.g., Private Annuity Agreement involving the Arlington Trust and Sarnia Investments Ltd. (PSI00092914-28), at Section 1.1(f).

<sup>679</sup> *Id.* at Section 6.1.

<sup>680</sup> *Id.* at Section 2.4.

<sup>681</sup> *Id.* at Section 2.4(a) and (b).

<sup>682</sup> *Id.* at Section 12. See IRC 72(u), explained above.

<sup>683</sup> The Subcommittee has obtained copies of four of these opinion letters. See 2/22/96 letters from Chatzky and Associates to Tallulah International Trust (PSI00131205-24) and

trusts that had entered into the annuity agreements with the IOM corporations.

The reasoning was similar to that used in the 1992 opinion letters. Each of the 1996 letters reasoned that an unsecured private annuity issued by a “foreign situs United States grantor trust” which was not in the annuity or insurance business, had no determinable value at the time of issuance and was not immediately taxable.<sup>684</sup> The opinion letters also reasoned that the stock options had no readily ascertainable value at the time of transfer, receipt of an “unfunded and unsecured promise to pay money in the future” was not a taxable event at the time of transfer, and the subsequent annuity payments were “more likely than not taxable as ordinary income upon receipt.”<sup>685</sup> In addition, the opinion letters determined that, because the value of the private annuity being provided equaled the fair market value of the stock options contributed in exchange for the annuity, the transaction would be considered arms-length and more likely than not exempt from the federal gift tax.<sup>686</sup>

Like the 1992 opinion letters, the 1996 letters failed to analyze whether the stock options had been transferred to related parties and subsequently, under Section 83, any stock option gains had to be attributed to the original stock option holders, Sam and Charles Wylly. The opinions also failed to acknowledge or discuss any of the facts since 1992 indicating that the Wyllys were exercising discretion over when the stock options held offshore would be exercised and how the cash proceeds would be used.

Later in 1996, Congress enacted legislation that stiffened the tax on transfers to foreign trusts and treated those foreign trusts as grantor trusts with respect to assets transferred after a specified date. In response, in November 1996, Chatzky and Associates issued another set of opinion letters concluding that the new law did not reach the stock options that had been transferred to the IOM trusts earlier in the year. To reach this conclusion, the opinion letters provided a hyper-technical reading of the new provisions, while failing to address the plain meaning of the overall statute. For example, the new law stated that the new tax treatment

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Woody International Trust (PSI00132396-416), and 3/7/96 letters to Woody International Trust (PSI00132210-31) and Crazy Horse Trust (provided by SBC Communications without bates numbers).

<sup>684</sup> See, e.g., 2/22/96 letter from Chatzky and Associates to Tallulah International Trust at 5-6 (PSI00131205-24).

<sup>685</sup> *Id.* at 12, 14 (PSI00131216, 18).

<sup>686</sup> *Id.* at 9 (PSI00131213).

applied to all “direct or indirect” transfers to a foreign trust, and the Senate committee report provided a pages-long list of examples of the types of transfers covered. The opinion letters essentially concluded that, because a transfer to a foreign trust’s corporation was not included in the list of examples, it must not be an “indirect transfer” to a trust.<sup>687</sup>

**Dissolution of the IOM Trusts.** In December 1996, all seven IOM trusts that had participated in the 1996 stock option-annuity swaps were dissolved. Each trust distributed its assets to its grantor, including the rights to payments under the private annuities.<sup>688</sup> Sam and Charles Wyly later assigned their annuity interests to their U.S. partnerships, Tallulah Ltd. and Stargate Ltd.

Like the 1992 stock option-annuity swaps, the evidence indicates that the 1996 stock option-annuity swaps were orchestrated by U.S. legal counsel and facilitated by publicly traded corporations. In this instance, on the advice of counsel, the Wyllys transferred millions of valuable stock options to newly created offshore trusts with no assets. The trusts, in turn, transferred them to offshore shell corporations in exchange for unsecured annuity agreements. Again, these transactions make no economic sense absent the tax deferral. The end result was that the Wyly-related offshore corporations took possession of 8.6 million stock options with an ascribed value of \$118.4 million. The Wyly legal advisers took the same position they did in 1992, that the Wyllys did not have to pay taxes on any of the \$118.4 million in stock option compensation, unless and until they began to receive annuity payments from the offshore corporations years in the future.

Together, the 1992 and 1996 stock option-annuity swaps moved offshore over 11 million stock options and warrants with a total ascribed value of about \$160 million. All of these stock options and warrants represented compensation paid by Michaels, Sterling Software, and Sterling Commerce to Sam and Charles Wyly. On advice of counsel, the Wyllys deferred paying taxes on any of this compensation, which not only put off millions of dollars in tax payments, but also provided the

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<sup>687</sup> See, e.g., 11/27/96 letters from Chatzky and Associates to Tallulah International Trust (PSI00131258-94) and Woody International Trust (PSI00132257-97).

<sup>688</sup> See, e.g., 12/31/96 “General Assignment From the Crazy Horse Trust to the Settlor of the Crazy Horse Trust” (PSI00009081-83); 12/31/96 “Acknowledgment of Receipt of Trust Assets” (PSI00093171)(regarding Sam Wyly’s receipt of assets from the Crazy Horse Trust); 12/31/96 “Obligor’s Consent and Acknowledgment of Annuity Assignment” and “Assignee’s Consent and Acknowledgment to Assume Duties Under Annuity” (PSI00093172-73)(regarding Locke’s consent to the assignment of the annuity from Crazy Horse Trust to Sam Wyly); and similar documents involving the Arlington Trust, Samia Investments, and Sam Wyly (PSI00093229-35); the Lincoln Creek Trust, Elegance, and Charles Wyly (PSI00029181, 84952); and the Woody International Trust, Soulieana, and Charles Wyly (PSI00013663-64).

offshore corporations with millions of U.S. securities that could easily be converted to cash and used for further investment.

**(e) 1999 and 2002 Stock Option Transfers For Cash**

A third set of transactions moved still more stock options offshore in 1999 and 2002. In contrast to the 1992 and 1996 transfers, these stock options were not exchanged for annuity agreements; instead they were exchanged for cash. In these transactions, Sam and Charles Wyly transferred a total of about 6 million Sterling Software and Sterling Commerce stock options directly to the offshore corporations in return for about \$31 million.

The Subcommittee was told by Wyly representatives that the Wyllys reported the \$31 million paid by the offshore corporations as taxable income and paid tax on it. On the advice of counsel, the Wyllys took the position that the transfers of the stock options were final “sales” to unrelated third parties, even though the Wyllys exercised direction over the offshore corporations and the trusts that owned them. Because the offshore corporations were unrelated parties, the Wyllys and their advisers concluded that any further action taken by the offshore corporations to exercise the stock options or otherwise dispose of them imposed no obligation on the Wyllys to report additional income obtained after the transfer. If the offshore corporations had instead been treated as related parties, the stock option transfers to those related parties would have been disregarded, and any stock option exercise gains would have produced income attributable to the original stock option holders, Sam and Charles Wyly.

Some of the stock options that the Wyllys had transferred to the offshore corporations were not exercised but were redeemed for cash in connection with the 2000 sale of Sterling Commerce. In March 2000, when SBC Communications, Inc. (SBC), now owned by AT&T, purchased Sterling Commerce, SBC paid cash for all outstanding Sterling Commerce stock options, including \$74 million for the options held by the Wyly-related offshore corporations. SBC informed the Wyllys at the time that it planned to report the \$74 million as stock option compensation for Sam and Charles Wyly, the original stock option holders, by filing a 1099 with the IRS. Wyly representatives persuaded SBC not to report this compensation, however, and SBC never sent a 1099 filing to the IRS. SBC nevertheless took a compensation deduction for the \$74 million.

The details of the 6 million stock options sold offshore for cash can be summarized as follows.

**1999 Cash Transfers.** During the summer of 1999, according to sworn testimony provided by Sam Wyly in a deposition taken in a civil lawsuit, a decision was made to sell Sterling Software and Sterling Commerce.<sup>689</sup> He explained: “In July of ‘99 we retained Goldman Sachs with a view to the sale of two companies: First, Sterling Commerce ... and also Sterling Software. ... Goldman was retained by both Sterling Commerce and Sterling Software to find potential buyers.”<sup>690</sup> At the time this decision was made, Sam and Charles Wyly held millions of stock options that had been granted to them as compensation from both companies.

On about September 30, 1999, Sam and Charles Wyly transferred about 3.3 million options that had been granted to them by Sterling Software and Sterling Commerce to four Wyly-related offshore corporations, East Carroll, Elegance, Greenbriar, and Quayle.<sup>691</sup> In exchange, East Carroll and Greenbriar paid Sam Wyly about \$17.8 million, while Elegance and Quayle paid Charles Wyly’s partnership Stargate Ltd. about \$9.3 million, for a total of about \$27 million in offshore dollars.<sup>692</sup> According to Ms. Hennington, Sam and Charles Wyly included all of the cash received from “selling” these stock options to offshore entities as taxable income on their 1999 tax returns. Sterling Commerce apparently took a corresponding tax deduction for this compensation;<sup>693</sup> it appears that Sterling Software did not.<sup>694</sup>

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<sup>689</sup> 7/26/05 deposition of Sam Wyly, Sam Wyly and Ranger Governance, Ltd. v. Computer Associates International Inc. And Sterling Software, Inc., Civil Action No. 3:04-CV-1984-B (N.D. Texas)(hereinafter “Sam Wyly Deposition”).

<sup>690</sup> *Id.* at 20.

<sup>691</sup> See chart entitled, “Transferring Assets Offshore,” prepared by the Subcommittee Minority Staff, summarizing the offshore transfers of Wyly assets. See also 9/29/99 Assignment Agreements transferring the Sterling Software and Sterling Commerce stock options (PSI\_ED00005980; HST\_PSI023218-23); 7/23/02 letter from Computer Associates to Sam and Stargate Ltd. (PSI00059890-92)(describing transfers of Sterling Software options); 9/30/99 untitled document circulated by Ms. Robertson to Sam and Charles Wyly and others identifying the number of stock options transferred in September 1999, their characteristics, and the “sales price” (HST\_PSI089318); Subcommittee interview of Keeley Hennington (4/26/06 and 5/8/06) (confirming these stock options were transferred in exchange for cash). Sam transferred 1,725,000 Sterling Software options and 462,500 Sterling Commerce options, while Charles transferred 900,000 Sterling Software options and 250,000 Sterling Commerce options, to the offshore corporations. East Carroll and Greenbriar are owned by trusts associated with Sam; while Elegance and Quayle are owned by trusts associated with Charles.

<sup>692</sup> See October 1999 faxes ordering Lehman Brothers to transfer funds from East Carroll and Greenbriar’s accounts to a Sam Wyly account (CC019988, 21648, 21720) and to transfer funds from Elegance and Quayle’s accounts to a Stargate Ltd. account (CC019661, 19666, 24086).

<sup>693</sup> Information provided by SBC (7/13/06).

<sup>694</sup> Information provided by CA (7/20/06).

In early 2000, Computer Associates International Inc., now known as CA, Inc. (CA), made an offer to buy Sterling Software, and SBC made an offer to buy Sterling Commerce. By March 2000, both sales were complete. The Sterling Software sale was accomplished through a \$4 billion stock transaction in which Sterling Software shares and options were converted into a smaller number of CA shares and options. That meant, for example, that the 2.6 million Sterling Software stock options that had been “sold” to the four IOM corporations in 1999, were converted into a total of about 1.5 million CA stock options. In contrast, the Sterling Commerce sale was accomplished through a \$4 billion cash transaction. That meant, for example, that SBC redeemed for cash the 712,500 Sterling Commerce stock options that had been “sold” to the offshore entities in 1999, as explained further below.

Because the 1999 stock option transfers took place within six months of the sales of Sterling Software and Sterling Commerce, the stock options sent offshore got caught up in events that followed the sales.

**CA Proxy Contest.** In July 2000, several months after completion of the Sterling Software sale, CA announced that it would miss earnings estimates, and its stock price dropped dramatically in a single day.<sup>695</sup> By 2001, Sam Wyly had lost confidence in CA’s management. He established a new U.S. corporation, Ranger Governance Ltd., which launched a proxy contest to replace the CA board of directors with an alternate slate.<sup>696</sup> Mr. Wyly called for the resignation of the company founder and chairman of the board, Charles Wang, as well as the current chief executive officer, Sanjay Kumar. The 2001 proxy contest failed, but Mr. Wyly, through Ranger Governance, did not give up, launching a second proxy contest with the same objective in 2002. These proxy battles generated negative publicity for CA.

In early 2002, one of the CA board members, Richard Grasso, then head of the New York Stock Exchange, arranged a private meeting in his office between Sam Wyly and Sanjay Kumar, and encouraged them to resolve their differences.<sup>697</sup> During this and two subsequent meetings, Mr. Wyly and Mr. Kumar reached a complex agreement to resolve a

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<sup>695</sup> Sam Wyly Deposition at 31 (CA/NDTX000581). According to a press report, Mr. Wyly later estimated that “he and his family trusts lost \$50 million in one day.” “Wyly’s War,” *Forbes* (4/25/05).

<sup>696</sup> Sam Wyly Deposition at 36 (CA/NDTX000584). See also 7/27/01 proxy statement filed by CA.

<sup>697</sup> Sam Wyly Deposition at 139-40 (CA/NDTX000687-88).



range of concerns.<sup>698</sup> Among other actions, Mr. Wyly agreed to end his proxy contest, refrain from new proxy contests for five years, extend an agreement not to compete with CA for five years, and make a public statement in support of CA's management. In return, among other matters, CA agreed to remove Mr. Wang from the CA board, elect an additional independent director, pay Mr. Wyly \$10 million in partial reimbursement of the proxy contest expenses, and address some pending personnel matters related to former Sterling Software executives. CA also agreed to address issues related to the Sterling Software stock options that had been granted to Sam and Charles Wyly and transferred offshore.

Stock options were included in the CA proxy issues resolved in 2002, at the request of Sam Wyly.<sup>699</sup> Mr. Wyly may have made this request in part because, earlier in 2002, the IRS had made an inquiry about the 1999 stock option transfers by Sam and Charles Wyly to East Carroll, Elegance, Greenbriar, and Quayle during a routine audit. The IRS had apparently asked "who the options were sold to so they could make a determination as to arms-length."<sup>700</sup> In response, neither CA nor the Wyllys had disclosed the relationship between the offshore corporations, their parent trusts, and the Wyly family.<sup>701</sup>

**2002 Letter Agreement and Additional Transfers.** A letter dated July 23, 2002 sets forth the agreement reached between the Wyllys and CA over stock options transferred to Wyly-related offshore corporations.<sup>702</sup> In it, CA agreed to treat the 1999 stock option transfers, as well as a new set of stock option transfers in 2002, as sales to

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<sup>698</sup> *Id.* at 132-34, 149-50, 152-56, 184 (CA/NDTX000680-82, 697-98, 700-704, 732).

<sup>699</sup> *Id.* at 127-28, 130 (CA/NDTX000675-76, 78).

<sup>700</sup> 6/12/02 email exchange between Ms. Hennington and Ms. Boucher (PSI00040005).

<sup>701</sup> *Id.* In this email exchange, Ms. Hennington wrote in part: "If [the IRS] comes back asking for the owners of the companies, I plan to give him the trustees name." Ms. Boucher responded in part: "[C]ouldn't you say that based on the documentation provided in the transaction, you have no information indicating who the shareholders are?"

When asked about this email exchange, Ms. Hennington admitted that, in fact, both she and Ms. Boucher knew the identity of the owners and shareholders of the offshore corporations. She also said that the IRS never actually asked for the company owners, so she did not have to answer the question. Subcommittee interviews of Ms. Hennington (4/26/06 and 5/8/06).

<sup>702</sup> 7/23/02 letter from CA to Sam Wyly and Stargate Ltd. (PSI00059890-92). The letter is executed solely by CA. This letter was the subject of extensive negotiations between Wyly and CA representatives who began discussing the issue in July and apparently concluded their discussions in October. See, e.g., Sam Wyly Deposition, exhibits 49-53 (containing multiple drafts of 7/23/02 letter); series of emails from 8/19/02 until 10/30/02 (PSI\_ED00011051-58). The documents suggest that the letter was actually signed in September or October 2002, and backdated to July.

independent third parties, even though the offshore corporations receiving the options and the trusts that owned the corporations were under the direction of the Wyllys and benefitted them and their families.<sup>703</sup> CA also agreed, with respect to the 1999 stock option transfers, not to file any 1099 or W-2 form attributing additional income to the Wyllys when the offshore corporations exercised the stock options.<sup>704</sup> Finally, CA stated that, while it would treat the amount of funds paid to the Wyllys for the 2002 stock options as income, it would then treat that transaction as a final sale to a “third party” and, if the offshore corporations exercised the stock options, would not attribute any additional stock option gains to the Wyllys as income.

In addition to signing the letter, CA executed four stock option transfer agreements that acknowledged the 2002 stock option transfers from the Wyllys to Greenbriar and Quayle, waived a five-day notice requirement, and amended the relevant stock option agreements to reflect the new ownership.<sup>705</sup> CA’s chief financial officer signed both the July 23, 2002 letter and the four stock option transfer agreements. CA indicated to the Subcommittee that, although the letter described the 1999 and 2002 stock option transfers as “third party transactions,” the

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<sup>703</sup> The first group of stock options addressed in the letter were the more than 2.6 million Sterling Software stock options which Sam and Charles Wyly had transferred to East Carroll, Elegance, Greenbriar, and Quayle in 1999, and which were later converted into nearly 1.5 million CA stock options.

The second group of options addressed in the letter involved stock options that had been held by the Wyllys domestically but, in connection with the letter, were being transferred offshore in 2002. They consisted of another 2.6 million Sterling Software stock options that had been granted to Sam and Charles Wyly as compensation years earlier, held by them domestically, and converted after the 2000 sale of the company into about 1.5 million CA options. The letter states that on 7/23/02, the same date as the letter itself, the Wyllys were transferring the 1.5 million CA stock options to two offshore corporations, Greenbriar and Quayle.

<sup>704</sup> Again, this tax position assumes that the offshore corporations that received the stock options were unrelated to the Wyllys. If the offshore corporations were treated as related parties, the 1978 Treasury regulations, cited earlier, would apply and require that the 1999 transfers be disregarded and any stock option exercise gains be attributed as taxable income to the original stock option holders, Sam and Charles Wyly. The letter also implies that compensation was actually reported in 1999, when the stock options were transferred to the offshore entities in exchange for about \$27 million in cash, but the documentation produced to the Subcommittee by CA suggests that Sterling Software did not, in fact, report this \$27 million as Wyly income on 1099 or W-2 forms filed in 1999.

<sup>705</sup> See 9/30/02 Agreement to Transfer Stock Options and Amend Stock Option Agreement, executed by CA, the relevant offshore corporation, and either Sam or Charles Wyly (CA/NDTX000860-63); related emails dated 8/19/02 to 10/30/02 (PSI\_ED00011051-58). Sam Wyly transferred options to buy 859,185 CA shares at an exercise price of \$25.071 per share and 112,680 CA shares at \$24.1835 per share to Greenbriar, while Charles Wyly transferred options to buy 450,720 CA shares at \$25.071 per share and 56,340 CA shares at \$24.1835 per share to Quayle. The total number of CA stock options involved in these sales was 1,478,925. See 7/23/02 letter from CA to Sam Wyly and Stargate Ltd. (PSI00059890-92).

company knew at the time that the four offshore corporations who purchased the stock options were not completely independent third parties, but were associated with Sam and Charles Wyly.<sup>706</sup>

In exchange for the 1.5 million options, Greenbriar apparently paid Sam Wyly about \$2.5 million, and Quayle apparently paid Charles Wyly about \$1.3 million, for a total of about \$3.8 million.<sup>707</sup> This amount is substantially less than the approximately \$15 million that the same two offshore corporations paid for the same number of shares in 1999, but CA's shares had dropped in value over the intervening three years. The \$3.8 million in offshore dollars was wired to Sam and Charles Wylys' accounts in the United States.

CA told the Subcommittee that, to date, none of the four offshore corporations that obtained CA stock options from the Wylys has exercised those options, perhaps due to relatively low CA stock prices in the wake of a significant accounting scandal.<sup>708</sup> If the stock options were to be exercised prior to their expiration dates in 2006 and 2007, CA told the Subcommittee that it would take into consideration the 2003 IRS Notice disallowing the executive stock option tax shelter, and re-evaluate whether to treat the stock option gains as compensation attributable to the Wylys. Currently, the four offshore corporations collectively hold nearly 3 million CA stock options.

**Sterling Commerce Options.** The transactions just discussed involved Sterling Software stock options. Transactions involving the Sterling Commerce stock options raise different issues. These Sterling Commerce options were moved offshore in two batches, through the 1996 stock option-annuity swaps and the 1999 transfers.

The first Sterling Commerce options were issued in February 1996, in anticipation of its initial public offering of stock. The company gave options to a number of its executives, including Sam and Charles Wyly

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<sup>706</sup> Subcommittee interview of CA representatives (4/11/06). See also 6/20/00 email from Ms. Hennington to CA (PSI\_ED00081631-32)(listing 1999 stock option transfers and indicating which the four offshore corporations receiving options was associated with Sam Wyly and which was associated with Charles Wyly).

<sup>707</sup> See, e.g., 7/29/02 emails between Ms. Hennington and CA (PSI\_ED00010321, 26-29). See also 2002 W-2 Forms issued by Computer Associates International Inc. to Sam and Charles Wyly, provided by CA to the Subcommittee without bates numbers.

<sup>708</sup> In 2004, CA admitted filing misleading financial reports which, among other matters, overstated its revenues. See, e.g., United States v. Computer Associates International, Inc., Case No. 04-CR-837, Deferred Prosecution Agreement (E.D.N.Y. 9/22/04). In 2005 and 2006, a number of its senior officers, including former CEO Sanjay Kumar, pled guilty to accounting fraud or related charges. See, e.g., transcript of guilty plea by Mr. Kumar, United States v. Richards, Case No. 04-CR-846 (E.D.N.Y. 4/24/06).

who were then company directors.<sup>709</sup> Sam Wyly obtained 3 million options, while Charles obtained 1.6 million. Three weeks later, on March 7, 1996, both men transferred all of these stock options offshore as part of the 1996 stock option-annuity swaps. Sam Wyly transferred 3 million stock options to Crazy Horse Trust which, in turn, transferred them to Moberly in exchange for a private annuity. Charles Wyly transferred 1.6 million stock options to Woody International Trust which, in turn, transferred them to Elysium in exchange for a private annuity.

From 1996 until 1999, Moberly and Elysium exercised some of the Sterling Commerce stock options, sold some of the shares, and transferred some of the options to Devotion and Elegance.<sup>710</sup> In September 1999, as explained earlier, Sam and Charles Wyly transferred another 712,500 Sterling Commerce stock options offshore to Greenbriar and Elegance.

In March 2000, SBC Communications completed its purchase of Sterling Commerce in a \$4 billion cash transaction, paying \$44.25 per share. As part of that transaction, SBC redeemed all outstanding Sterling Commerce stock options and paid option holders cash equal to the difference between \$44.25 and the option strike price.<sup>711</sup> As a result, on March 27, 2000, SBC paid Moberly \$46,575,000, and Elysium \$27,337,500, for a total of nearly \$74 million.<sup>712</sup>

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<sup>709</sup> See, e.g., 2/12/96 "Sterling Commerce, Inc. 1996 Stock Option Plan: Stock Option Agreement" with Sam Wyly (PSI00085949-52).

<sup>710</sup> See, e.g., 2/17/00 emails exchanged between Ms. Robertson and Ms. Boucher about these stock option transactions (MAV007928-36), including a detailed chart prepared by Sterling Commerce personnel (MAV007932).

<sup>711</sup> See, e.g., 1/11/01 letter from SBC to Sam Wyly (PSI00063565); undated chart produced by the Wyls listing the Sterling Commerce stock option holdings of the offshore entities, identifying the relevant strike price for the options, and estimating the likely proceeds and net proceeds from the SBC redemption at \$44.25 per share (PSI\_ED00046876). The list includes stock options from both the 1996 stock-option annuity swap and 1999 transfers.

<sup>712</sup> See 5/11/06 letter from AT&T to the Subcommittee. (AT&T now owns SBC.) A chart apparently prepared for the Wyls in 2000 (PSI\_ED00046876), indicates that, at the time of the SBC offer, five offshore corporations, Devotion, Elegance, Elysium, Greenbriar, and Moberly, belonging to five different Wyly-related offshore trusts, held about 4.5 million Sterling Commerce stock options. Despite that chart, the evidence is clear that SBC paid only two of the corporations, Moberly and Elysium, for all of the options held offshore. Moberly, which is associated with Sam Wyly, appears to have been paid for all the stock options on the chart listed as being held by IOM corporations associated with him; and Elysium, which is associated with Charles Wyly, appears to have been paid for all the stock options on the chart held by IOM corporations associated with him. The two payments suggest that the offshore entities must have coordinated and consolidated their stock option holdings before dealing with SBC.

On January 11, 2001, SBC sent a letter to Sam Wyly informing him that “SBC is preparing to issue a Form 1099 to you/your trust showing taxable income of \$46,575,000. If you are aware of any reason that this Form 1099 should not be issued, please contact [the company].”<sup>713</sup> A similar letter informed Charles Wyly that SBC was planning to issue a 1099 form attributing income to him totaling \$27,337,500.<sup>714</sup>

Representatives of the Wyllys promptly contacted SBC to persuade the company not to file the 1099 forms reporting the \$74 million. Ms. Hennington apparently spoke with Al Hoover, Sterling Commerce’s former general counsel who had moved to SBC’s legal department after the 2000 sale.<sup>715</sup> On January 26, 2001, Rodney Owens of the Meadows Owens law firm sent letters to SBC as legal counsel for Elysium and Moberly, asserting that no 1099 form had to be filed since both companies were foreign corporations not subject to U.S. tax.<sup>716</sup> On February 2, 2001, Mr. French sent SBC a two-page memorandum with a collection of supporting documents, explaining why no Wyly compensation should be reported to the IRS.<sup>717</sup> The memorandum described the 1996 stock option-annuity swaps involving Sterling Commerce stock options, and noted that the transfers “were disclosed to [Sterling Commerce] management in 1996 when they occurred.” It stated that, had the stock options been transferred in exchange for cash, “there would have been a taxable event at that time, triggering an income

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<sup>713</sup> 1/11/01 letter from SBC to Sam Wyly (PSI00063565).

<sup>714</sup> 1/11/01 letter from SBC to Charles Wyly (PSI00063567).

<sup>715</sup> See 1/17/01 email from Ms. Hennington to Ms. Boucher (PSI-WYBR00607) (“Al Hoover is sending over some info from SBC’s tax department on 1099’s. They are saying there is nothing in their file to show why the offshore trusts should not be issued a 1099 and they plan to do so at 1/31 unless they receive documentation from us. ... Evan wants me to call Rodney which I will do ....”); 1/17/01 email from Ms. Hennington to Rodney Owens about issue (PSI-WYBR00608).

<sup>716</sup> See 1/26/01 letters from Meadows Owens, signed by Mr. Owens, to SBC in which Mr. Owens stated that he represented Elysium (PSI-WYBR00612-13) and Moberly (PSI-WYBR00616-17). While it is true that 1099s normally do not need to be issued for payments made to foreign corporations not subject to U.S. tax, neither letter addressed the real issues at stake, whether the offshore corporations were related parties to the Wyllys, whether the stock option compensation had to be attributed to the Wyllys, and whether 1099 forms had to be issued with respect to Sam and Charles Wyly.

<sup>717</sup> 2/9/01 memorandum to file by Mr. French, provided to the Subcommittee by SBC (without bates numbers), with five attachments: the March 1996 transfer by Sam Wyly of three million Sterling Commerce stock options to the Crazy Horse Trust, the subsequent transfer of the options from the Trust to Moberly, the private annuity agreement obtained in exchange, the legal opinion letter to the Crazy Horse Trust provided by Chatzky and Associates, and a 2/7/01 valuation of the annuity agreements by Milliman & Robertson, Inc. Mr. French had severed business ties with the Wyly family two months earlier, but nevertheless agreed to provide them the memorandum on this matter. Subcommittee interview of Mr. French (4/21/06).

tax liability on the part of SW, CJW and EW and a corresponding tax deduction on the part of [Sterling Commerce]. However, in exchange for such options, SW, CJW and EW received private annuity agreements ... with annual payments commencing after a period of deferral. ... As of this date, payments have not yet commenced.” In other words, the memorandum claimed that no taxes were due on the Wyly stock option compensation because the stock options had been transferred to independent parties in exchange for private annuities of equivalent value, and that taxes had to be paid only when the Wyllys began receiving the promised annuity payments years later. The memorandum also stated that Sterling Commerce management had “agreed to the deferred tax treatment of the Annuities” in 1996. It noted further that the “independent foreign entities that had purchased the options” were “not subject to U.S. income taxation.”

On March 28, 2001, Ms. Hennington sent the following email to Sam and Charles Wyly, Ms. Robertson, Ms. Boucher, Mr. French, and others, indicating that SBC had agreed not to report the \$74 million to the IRS:

“Wanted to let everyone know that I heard a final answer from SBC today that they will not be issuing any 1099's to Sam, Charles or Evan for the option exercises. They are sending a letter to me with what information they need. The good news is that I do not think they are going to require anything from the trustees or directors directly. They seem to be most focused on the annuity payout schedules and getting yearly updates on these. We also will not need to do any indemnity agreement with regard to penalties.

“The only issue they are looking into is whether they have any reporting requirements with regard to payments to foreign corporations. I have a call into Rodney to check this out (they do not sound too concerned about it). They also said there is a very slim chance they may find a strong enough position to take a deduction on their return this year. If they do and are audited the private annuity agreement could be challenged. Again, they did not think this was a high likelihood and we will likely have this risk whenever they take the deduction.

“I will keep everyone informed when I get their letter, but looks like we do not have to worry about any 1099's surfacing.”<sup>718</sup>

Subsequently, although SBC did not file the 1099 forms declaring the compensation, it nevertheless took a 2000 tax deduction for the \$74 million it had paid to the offshore corporations, treating the payments as stock option compensation.<sup>719</sup> When asked about this contradiction – taking a tax deduction for compensation that SBC did not report to the IRS – SBC told the Subcommittee that it was their understanding that, because the \$74 million had been paid to the offshore corporations, tax code Section 6041 excused them from filing 1099s for payments made to foreign corporations.

SBC provided a copy of a 2001 memorandum prepared by Ms. Hennington, advising the company that it had no obligation to file a 1099 due to the Section 6041 exception; it had no obligation to withhold any portion of the payments made to the offshore corporations under tax code Sections 881 and 1442; and it had no obligation to file a related Form 1042-S with the IRS.<sup>720</sup> This analysis, however, does not address the real issue – whether SBC had to report the \$74 million paid to the offshore corporations as income to the original stock option holders, Sam and Charles Wyly. SBC's position also ignores Treasury Regulation Section 1.83-6(a)(2) which provides that a corporation may take a deduction for stock option compensation under IRC Section 83 only if the option holder includes the stock option gains in income, unless the corporation issues a W-2 or 1099 form reporting the compensation to the IRS.<sup>721</sup>

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<sup>718</sup> 3/28/01 email from Ms. Hennington to Sam, Charles and Evan Wyly, Ms. Robertson, Ms. Boucher, and Mr. French on SBC (PSI00088942).

<sup>719</sup> Information provided to the Subcommittee by SBC's legal department. Section 83(h) of the tax code permits an employer to deduct only the amount of stock option gains included in the employee's income during the year, yet here, SBC knew that the Sam and Charles Wyly did not plan to include any of the \$74 million in their 2000 income.

<sup>720</sup> See 9/12/01 email from Ms. Hennington to John Brockman of SBC and attached “Memo to File” regarding “Sale of Sterling Commerce Options to SBC,” produced by SBC without bates numbers. Ms. Hennington wrote in part: “Attached is the memo I did for our files after discussions with our attorneys. Please review and let me know your thoughts.” See also 5/2/01, 6/8/02, and 7/5/01 emails exchanged between Ms. Hennington and Lawrence Ruzicka of SBC's legal department (produced by SBC without bates numbers)(discussing whether SBC was obligated to withhold 30 percent of the payments to the offshore corporations under Section 1442, and file Form 1042-S with the IRS).

<sup>721</sup> See response by Wyly legal counsel to an IRS inquiry (PSI00090729, 1883).

**(f) Current Status of Private Annuities**

Altogether, the 1992, 1996, 1999, and 2002 transactions moved more than 17 million Wyly stock options and warrants offshore.<sup>722</sup> About 11 million of those stock options and warrants were exchanged for private annuities. The 1992 transactions involved nearly 3 million stock options and warrants valued by the parties at \$41.8 million, while the 1996 transactions involved 8.6 million options valued by the parties at \$118.4 million, for a total of about \$160 million. The stock options and warrants ended up being held by 20 offshore corporations, of which twelve held annuities payable to Sam Wyly and eight held annuities payable to Charles Wyly or his wife.

Over the following years, the Wyly family office closely tracked the value of the private annuities and the annual payments that each agreement would be required to provide once the annuitants reached the specified age for payments to begin. These valuations fluctuated in part due to the varying interest rates used to determine the net present value of payments due in the future. To calculate the net present value of the annuities, the Wyly family office repeatedly obtained written annuity valuations from Milliman & Robertson, Inc., a large actuarial firm with offices in Texas. The key contact at the firm was Eric Ammann, described as a principal in the Texas office. When Mr. Ammann later moved to Retirement Horizons, Inc., a smaller Texas actuarial firm, the annuity valuations were performed by that firm.

**Annuity Adjustments.** On two occasions in 1998 and 2004, adjustments were made to the terms of the annuities which increased their overall value and resulted in an increase in the amount of payments due under them. By the end of 2004, the overall value of the private annuities and the total amount of payments required to be paid under the agreements had more than tripled, from a total of \$158 million to about \$483 million.

**1998 Adjustment.** The first adjustment occurred in January 1998, when all 20 of the annuity agreements were amended to delay the commencement date of the first annuity payment by four years.<sup>723</sup> These

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<sup>722</sup> In addition to these offshore transfers made by the Wyls, Michaels Stores sold four million shares to five Wyly-related offshore corporations, Audubon Assets (then called Fugue), Devotion, Elegance, Locke, and Quayle, in private transactions that took place in March 1996, December 1996, and February 1997, in exchange for cash totaling about \$40 million. See, e.g., 4/29/96 10-K405/A filing by Michaels; 5/2/97 10-K filing by Michaels; 12/23/96 and 5/20/97 Schedules 13D filed by Trident with respect to Michaels shares.

<sup>723</sup> See, e.g., chart entitled "Summary of Private Annuities" (PSI00040139); 1/31/98 "Amendment of Private Annuity" related to annuity agreement between Locke and Sam Wyly



amendments meant that the first annuity payment due under the 20 annuity agreements was postponed from October 1999 to October 2003. The added four years also meant that the offshore corporations could continue to use and invest the assets that had been sent to them offshore without having to make any annuity payments to the Wyllys in the United States that could be taxed.

The 1998 amendments to the annuity agreements did not specify the interest rate to be applied during the additional four-year deferral period. In December 1998, Milliman & Robertson recalculated the value of the 20 private annuities using a 5.4 percent per annum interest rate, which was the IRS-recommended rate applicable during the month of December. This interest rate was used to determine the value of each annuity, taking into account the additional four-year deferral period. The general impact on the annuities was to increase their overall value as well as to increase the amount of the annual payment due under each agreement. For example, according to the calculations, the annual annuity payment owed under the Little Woody annuity increased from the original projected amount of \$909,050 in 1992, to \$1,363,889 in 1998, an increase of nearly 50 percent.<sup>724</sup>

In May 2000, Ms. Boucher suggested to Ms. Robertson that the annuity values be recalculated again.<sup>725</sup> She wrote: "I spoke with Eric Ammann today. I think they should recalculate the annuity payments as follows. ... Eric Ammann doesn't fully understand the annuities, and is not happy to tell us which way to go. Since it could be a tax issue ... I'm happy to run it by Rodney, but maybe Keeley should consider it too, or even think about asking EY [Ernst & Young]."

It is unclear whether her proposal was followed, but over the next few years, the present value of the private annuities continued to increase. By 2001, written valuations showed that the annuities had a

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(PSI00093174-75) and between Soulieana and Charles Wyly (PSI00009469-70).

<sup>724</sup> See, e.g., 7/23/04 letter from Retirement Horizons, Inc., Eric Ammann, Principal, to Mr. Francis Webb, c/o Little Woody Ltd., on "Modifications to the Private Annuity between Little Woody Limited and Charles J. Wyly, Jr. dated April 15, 1992" (PSI00078316-19). See also "Private Annuity Valuations (Revised\* 3/3/99)" prepared by Milliman & Robertson (PSI00040135-39).

<sup>725</sup> 5/16/00 email from Ms. Boucher to Ms. Robertson (PSI\_ED00048169).

net present value of about \$252 million.<sup>726</sup> Two years later, by the end of 2003, the value had increased again, to about \$437 million.<sup>727</sup>

**2004 Adjustment.** In 2004, a formal change was made in the methodology used to value the private annuities, and the new methodology further increased the annual payments required to be made under the annuity agreements. An undated chart entitled, “Comparison of Retirement Horizon Annuity Valuations” as of December 31, 2003, shows that three valuation alternatives were considered, using different interest rates and different dates on which those rates would be applied.<sup>728</sup> Each alternative produced different amounts of annual payments due under the private annuities, with the 1992 annual payment totals ranging from \$133 to \$149 million, and the 1996 annual payment totals ranging from \$329 to \$350 million. In July 2004, new values were calculated.

In a July 2004 letter, for example, Retirement Horizons applied the new methodology to an annuity held by Little Woody, and calculated “an increase in the annual annuity payment.”<sup>729</sup> A “history of the calculated annuity payments” due under the Little Woody annuity, included in the letter, showed that the annual payment had grown from the original projected amount of \$909,050 in 1992; to \$1,363,889 in 1998; to \$1,459,871 in 2004.<sup>730</sup>

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<sup>726</sup> See, e.g., PSI00038779, 45213 (together valuing the annuities at about \$252 million).

<sup>727</sup> 12/31/03 letter from Retirement Horizons, Inc. to Ms. Boucher at the Irish Trust Company (PSI00040189-93).

<sup>728</sup> Undated chart entitled, “Comparison of Retirement Horizon Annuity Valuations: December 31, 2003 Valuations” (PSI00040193).

<sup>729</sup> 7/23/04 letter from Retirement Horizons, Inc., Eric Ammann, Principal, to Mr. Francis Webb, c/o Little Woody Ltd., on “Modifications to the Private Annuity between Little Woody Limited and Charles J. Wyly, Jr. dated April 15, 1992,” with copy faxed to Michelle Boucher (PSI00078316-19). In the letter, the firm explained as follows: “When the original deferment calculations were completed several years ago, the discount rate used was the rate ... in effect at the end of the year that the contract was modified (1998). Thus, the discount rate used was the December, 1998 Federal Mid-term Rate of 5.4%. However, the Contract amendment was effective eleven months earlier in January of 1998. Furthermore, this eleven month period experienced a significant change in the Federal Mid-term Rate, as the January 1998 rate was 7.2%. ... Given this degree of change in the applicable discount rate between January and December of 1998, coupled with the valuation principle that an amendment to the terms of the Contract that affects the timing of the receipt of the annuity payments should be accomplished based upon a current market discount rate, the new payment amount ... is the more appropriate payment value.”

<sup>730</sup> *Id.* The letter also noted that the first payment under the Little Woody annuity had been made in October 2003 in the amount of \$1,363,889, which meant that, due to the recalculation, an additional payment of \$99,051 was owing.

On August 2, 1994, a letter containing virtually identical phrasing and analysis required an increase in the annual payments due under the private annuity provided by Elegance.<sup>731</sup> A “history of the calculated annuity payments” due under the Elegance annuity showed that the annual payment had grown from the original projected amount of \$1,380,999 in 1996; to \$2,461,209 in 1998; to \$2,634,138 in 2004. A virtually identical letter dated June 9, 2004, addressed to IFG, performed the same analysis for the East Carroll annuity, requiring an increase in its annual payment from the original projected amount of \$1,956,558 in 1992; to \$2,934,569 in 1998; to \$3,142,095 in 2004.<sup>732</sup>

It is unknown whether similar letters were sent to the other 17 corporations holding annuities payable to the Wylys. What is known is that, by the end of 2004, an internal Wyly financial document valued the 20 offshore annuities at about \$483 million.<sup>733</sup> The Subcommittee saw no documentation indicating that, as one might expect in a truly arm’s-length relationship, any offshore corporation, parent trust, or trustee raised an objection to the tripling of their payment obligations.

**Annuity Payments.** When the 1992 and 1996 annuities were first established, the dollar values specified in the annuity agreements produced a combined total value of about \$158 million. By the end of 2004, internal Wyly financial reports showed that the combined value of these same annuities had tripled to about \$483 million, requiring the offshore corporations to make significantly larger annual payments than originally specified.

The first two payments due under the 20 private annuities were made by Little Woody and Roaring Creek to Charles Wyly in October 2003.<sup>734</sup> By 2004, all ten of the 1992 annuities commenced making

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<sup>731</sup> 8/2/04 letter from Retirement Horizons, Inc., Eric Ammann, Principal, to Mark Lewin of Close Trustees (IOM) Ltd. on “Modifications to the Private Annuity between Elegance Limited and The Lincoln Creek Trust dated February 22, 1996,” (PSI00058430-31).

<sup>732</sup> 6/9/04 letter from Eric Ammann to IFG International (PSI\_ED00014767-68)(copy is unsigned and not on letterhead so it is not certain that it was sent).

<sup>733</sup> 12/31/04 document entitled, “Annuity Pricing” (PSI\_ED00024122-23)(pricing the annuities each year from 12/31/00 to 12/31/04). The \$483 million includes only the 20 offshore annuities payable to Sam, Charles or Charles’ wife. See also, e.g., 12/31/04 financial report entitled, “Family Offshore” (PSI\_ED00095235) (showing an “Annuity Payable” for the offshore system of \$507,794,514); 12/31/04 financial report entitled, “Global SW Family” (PSI\_ED00095232-33) (showing an “Annuity Payable” of \$341,370,493); and 12/31/04 financial report entitled, “Global CW Family” (HST\_PSI006887) (showing an “Annuity Payable” of \$166,424,021). The figures in the financial reports include offshore annuities payable not only to Sam, Charles and Charles’ wife, but also to Sam’s son and son-in-law.

<sup>734</sup> The payment dates for the 20 offshore annuities are set out in an undated chart, likely prepared in 1999, entitled “Summary of Private Annuities” (PSI00040139).

annual payments to Sam, Charles, or Charles Wyly's wife. The 1996 annuities payable to Charles Wyly are scheduled to commence making annual payments to him in October 2006, while the 1996 annuities payable to Sam Wyly are scheduled to commence making annual payments in 2007. According to a chart prepared for the Wyls at the end of 2004, when all 20 annuities are activated – which should take place in 2007 – the twelve offshore corporations obligated to make payments to Sam Wyly were expected to pay him a total of about \$42.8 million that year, while the eight offshore corporations obligated to make annual payments to Charles Wyly or his wife were expected to pay them a total of about \$20.6 million during that year.<sup>735</sup>

The Subcommittee was told that, to date, one annuity payment has been missed and remains unpaid. A scheduled payment for \$1.138 million should have been paid by Roaring Creek to Charles Wyly in November 2005.<sup>736</sup> Roaring Creek is an IOM corporation owned by the Pitkin Trust, which was established by Charles Wyly and benefits his family. The Pitkin Trustee apparently informed Mr. Wyly that Roaring Creek had failed to make the required annuity payment, because it had insufficient assets.<sup>737</sup> Although the payment was due on November 1, 2005, the Subcommittee was told that, to date, Mr. Wyly had not made a written request for payment.<sup>738</sup>

Since 1992, Roaring Creek has been an active participant in activities undertaken by the Wyly-related offshore entities, as described in subsequent sections of this Report. For example, it was one of the ten IOM corporations that participated in the 1992 stock option-annuity swaps, obtaining 187,500 Michaels stock options.<sup>739</sup> It apparently exercised these stock options and sold most of the shares in 1992.<sup>740</sup> Other documents suggest that Roaring Creek issued a loan for more than \$1 million to Little Woody in 1992 (PSI00028097-98, 118054, CSFB0007000); obtained a \$414,000 loan from Roaring Fork in 1993 (PSI00128354, PSI00127139); issued a loan for \$1.5 million to Castle

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<sup>735</sup> See undated document providing "Value of Annuity at 12/31/04" for Sam and Charles Wyly (PSI\_ED00024950-53).

<sup>736</sup> Information provided by Ms. Hennington's legal counsel (5/30/06).

<sup>737</sup> Subcommittee interview of Ms. Hennington (4/26/06).

<sup>738</sup> Information provided by Ms. Hennington's legal counsel (5/30/06).

<sup>739</sup> Private Annuity Agreement involving Roaring Creek, Schedule A (PSI00133289-305).

<sup>740</sup> See 4/20/92 letter from Mr. French and Ms. Robertson to Lorne House (PSI00028097-98); "Roaring Creek Limited Summary of Profit & Loss on Investments for the Period 1/05/92 to 3/11/93" (PSI00128352).

Creek International Trust in 1993 (PSI00128354, 128357, PSI\_ED00094807); issued a loan of more than \$100,000 to Scottish Re in 1994 (PSI00121413, 136238, 137814); issued a \$1.4 million loan to Roaring Fork in 2000 (CC016311); and obtained a \$1 million loan from the Bulldog Trust in or before 2004 (PSI\_ED00094521-23). In addition, in 2000, Roaring Creek appears to have been a lender to and one of four owners of First Dallas International Ltd., part of a private investment fund established by Charles Wyly.<sup>741</sup> These transactions suggest that Roaring Creek has assets of its own as well as a history of being able to borrow funds from other Wyly-related offshore entities. In addition, the Subcommittee has been told that its parent, the Pitkin Trust, has considerably more than \$1.1 million in assets and could lend funds to Roaring Creek to satisfy the missing annuity payment.<sup>742</sup> It is unclear why neither the Pitkin Trust nor any other Wyly-related offshore entity has provided Roaring Creek with the funds needed for the annuity payment.<sup>743</sup>

If Roaring Creek were to continue to default on its unsecured annuity obligation, the Wyls could choose to sue the corporation and its parent trust in the Isle of Man to obtain payment. Alternatively, the Wyls could choose to accept the default and simply allow the untaxed annuity assets to remain offshore. Accepting this default would free Mr. Wyly of any obligation to pay U.S. tax on the funds that he otherwise would have received from Roaring Creek.

If annuity payments were to be missed by any of the other IOM corporations, the Wyls would face the same choice of filing an IOM lawsuit to obtain payment or accepting the default and allowing the annuity assets to remain offshore and untaxed. Ms. Hennington told the Subcommittee that, as far as she knew, the Wyls had no plans to forego the annuity payments, because they were planning to use the funds to help them meet their financial goals and obligations. She also told the Subcommittee that the Wyly family office had obtained legal advice that

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<sup>741</sup> See 5/28/02 emails between Louis Schaufele of Bank of America and Ms. Hennington (PSI\_ED00006917)(Mr. Schaufele wrote: "Could you tell ... me whom the owners of 1<sup>st</sup> Dallas, I assume that it is IOM corps." Ms. Hennington responded: "[T]he companies are: Roaring Creek Limited, Roaring Fork Limited, Elysium Limited, Elegance Limited."). For more information about First Dallas International, see Report section on Supplying Offshore Dollars to Wyly Business Ventures, below.

<sup>742</sup> Subcommittee interview of Ms. Hennington (4/26/06).

<sup>743</sup> Because the Pitkin Trustee, the IOM office of Trident, refused to meet or discuss client specific matters, the Subcommittee has been unable to obtain its views on this issue.

the offshore corporations could meet their obligations with in-kind contributions of assets in lieu of cash payments.<sup>744</sup>

The Subcommittee was told that, to date, the Wyls have received about \$35 million in annuity payments.<sup>745</sup> The next annuity payments are due in October 2006.

#### **(g) Analysis of Issues**

The 17 million stock options and warrants moved offshore over a ten-year period, from 1992 until 2002, represented at least \$190 million in compensation provided to Sam and Charles Wyls by Michaels, Sterling Software, and Sterling Commerce.<sup>746</sup> Of this \$190 million, Sam and Charles Wyls appear to have reported \$31 million as taxable income in 2002. Since 2003, another \$35 million was transferred to the Wyls in the form of annuity payments, for which taxes were presumably paid. It appears that the remaining \$124 million in stock option compensation remains offshore and untaxed.

The U.S. publicly traded corporations that issued the stock options could have reported to the IRS the stock option gains realized when the options were exercised, but chose not to do so. The 20 offshore corporations that exercised the stock options and warrants then sold the shares or used them in securities transactions to produce additional income that was also untaxed.

The offshore transfers at the center of this case history involve sending valuable stock options and warrants to newly created shell entities with no employees, offices, or assets, in exchange for unsecured promises to make annuity payments years in the future. These transactions do not make economic sense, unless the recipients of the assets are understood to be related parties under the direction of the persons who sent the assets offshore.

Also key to understanding these transactions is the immense effort that was undertaken to keep them secret. Securities were directed to

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<sup>744</sup> Subcommittee interview of Ms. Hennington (4/26/06).

<sup>745</sup> Information provided by Ms. Hennington's legal counsel as of 7/21/06.

<sup>746</sup> The \$190 million was calculated as follows. The annuity agreements in 1992 and 1996 ascribed a fair market value of about \$160.2 million to the 11 million stock options involved in those transactions. Another 6 million stock options were exchanged for \$31 million. By the Wyls' own calculation, then, their stock option compensation totaled \$191.2 million. This valuation figure is conservative, since it does not include the additional millions of dollars in gains obtained when the 11 stock options were exercised, nor the additional \$33 million obtained when SBC paid \$74 million for the 6 million options.

shell corporations in Nevada which sent them to IOM corporations bearing the same corporate names. Offshore grantor trusts were established to act as intermediaries for stock options intended to be transferred to still other offshore entities. Public corporations were persuaded not to file W-2 or 1099 forms reporting stock option gains to the IRS. A public corporation that made nearly \$74 million in cash payments to offshore corporations was told it had no legal obligation to file forms reporting those payments to the IRS. When the IRS asked CA, in 2002, about Wyly stock option transfers to four offshore corporations, no one disclosed to the IRS that the offshore corporations were owned by trusts benefitting the Wyly family. In short, the extent of the stock option compensation sent offshore was kept hidden from the IRS.

Five publicly traded corporations, Michaels, Sterling Software, Sterling Commerce, SBC and CA, facilitated these offshore transfers and helped the Wyllys avoid the immediate payment of taxes on their stock option compensation. Michaels and Sterling Software allowed the transfer of stock options that were supposed to be nontransferable. Four of the five amended their ownership records to accept stock option ownership by the offshore corporations. All five chose not to file 1099 or W-2 forms reporting Wyly stock option compensation to the IRS. All but one gave up taking multi-million-dollar tax deductions for the Wyly stock option compensation. As part of a repricing of all its employee stock options, Michaels even repriced the stock options held by the offshore entities, substantially increasing their value. None conducted a detailed investigation into the true relationship between the offshore entities and the Wyllys to determine whether, in fact, they were independent or related parties.

# TRANSFERRING ASSETS OFFSHORE

Part I: 1992 STOCK OPTION-ANNUITY SWAPS

Initial Assets	Annuity and Annuity Date	IOM Entity Obligated to Pay Annuity	Parties Involved, Exercises
187,500 MIK options	Charles Wyly 4/13/92	Roaring Creek Limited	Charles Wyly transferred options in exchange for annuity from Roaring Creek Limited of Nevada, which assigned annuity and options to Roaring Creek Limited of IOM. Options exercised in May and August 1992.
187,500 MIK options	Charles Wyly's Wife 4/13/92	Rugosa Limited	Charles Wyly's wife transferred options in exchange for annuity from Maroon Limited of Nevada, which assigned annuity and options to Rugosa Limited of IOM. Options exercised in May and August 1992.
166,500 SSW options & 169,432 SSW warrants	Charles Wyly 4/15/92	Little Woody Limited	Charles Wyly transferred options in exchange for annuity from Little Woody Limited of Nevada, which assigned annuity and options to Little Woody Limited of IOM. Options exercised May 1992, warrants exercised January 1994.
166,500 SSW options & 169,432 SSW warrants	Charles Wyly's Wife 4/15/92	Roaring Fork Limited	Charles Wyly's wife transferred options in exchange for annuity from Roaring Fork Limited of Nevada, which assigned annuity, options and warrants to Roaring Fork Limited of IOM. Options exercised May 1992, warrants exercised January 1994.
375,000 MIK options	Sam Wyly 4/13/92	East Baton Rouge Limited	Sam Wyly transferred options in exchange for annuity from East Baton Rouge Limited of Nevada, which assigned annuity and options to East Baton Rouge Limited of IOM. Options exercised May and August 1992.
100,000 MIK warrants & 110,000 MIK options	Sam Wyly 4/13/92	Tensas Limited	Sam Wyly transferred options in exchange for annuity from Tensas Limited of Nevada, which assigned annuity and warrants and options to Tensas Limited of IOM. Options and warrants exercised May 1992.



Initial Assets	Annuitant and Annuity Date	IOM Entity Obligated to Pay Annuity	Parties Involved, Exercises
667,000 SSW options	Sam Wyly 4/15/92	East Carroll Limited	Sam Wyly transferred options in exchange for annuity from East Carroll Limited of Nevada, which assigned annuity and options to East Carroll Limited of IOM.  Options exercised May 1992.
204,725 SSW warrants	Sam Wyly 4/15/92	Morehouse Limited	Sam Wyly transferred options in exchange for annuity from Morehouse Limited of Nevada, which assigned annuity and options to Morehouse Limited of IOM.  Warrants exercised January 1994.
240,000 SSW warrants	Sam Wyly 4/15/92	Richland Limited	Sam Wyly transferred warrants in exchange for annuity from Richland Limited of Nevada, which assigned annuity and options to Richland Limited of IOM.  Warrants exercised January 1994.
200,000 SSW warrants	Sam Wyly 4/15/92	West Carroll Limited	Sam Wyly transferred options in exchange for annuity from West Carroll Limited of Nevada, which assigned annuity and options to West Carroll Limited of IOM.  Warrants exercised January 1994.

Part II: 1996 STOCK OPTION-ANNUITY SWAPS

Initial Assets	Annuitant and Annuity Date	IOM Entity Obligated to Pay Annuity	Parties Involved, Exercises
100,000 MIK options & 300,000 SSW options	Charles Wyly 2/22/96	Souleana Limited	Charles Wyly transferred options to Woody International Trust of IOM, which transferred them to Souleana in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly. SSW options exercised February 1996. MIK options exercised August 2000.
350,000 MIK options & 250,000 SSW options	Charles Wyly 2/22/96	Quayle Limited	Charles Wyly transferred options to Maroon Creek Trust of IOM, which transferred them to Quayle in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly. SSW options exercised March 1996. MIK options exercised August 2000.
333,334 SSW options	Charles Wyly 2/22/96	Elegance Limited	Charles Wyly transferred options to Lincoln Creek Trust of IOM, which transferred them to Elegance in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly.
1.6 million Sterling Commerce options	2/22/96 Charles Wyly	Elysium Limited	Options exercised in May and June 1996. Charles Wyly transferred options to Woody International Trust of IOM, which transferred them to Elysium in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly.
666,666 SSW options	3/7/96 Sam Wyly 2/22/96	Devotion Limited	Options exercised April 1998, May 1999 and March 2000. Sam Wyly transferred options to the Siting Bull Trust of IOM, which transferred them to Devotion in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly.
300,000 SSW options	Sam Wyly 2/22/96	Fugue Limited (renamed in 1997 Audubon Asset Limited)	Options exercised in May and June 1996. Sam Wyly transferred options to Crazy Horse Trust of IOM, which transferred them to Fugue in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly. Options exercised March 1996.

Initial Assets	Annuity and Annuity Date	IOM Entity Obligated to Pay Annuity	Parties Involved, Exercises
650,000 SSW options	Sam Wyly 2/22/96	Locke Limited	Sam Wyly transferred options to Crazy Horse Trust of IOM, which transferred them to Locke in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly.
150,000 SSW options	Sam Wyly 2/22/96	Sarnia Investments Limited	Options exercised in February and March of 1996. Sam Wyly transferred options to Arlington Trust, which transferred them to Sarnia in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly.
900,000 MIK options	Sam Wyly 2/22/96	Yurtia Faf Limited	Options exercised in March 1996. Sam Wyly transferred options to Tallulah International Trust of IOM, which assigned them to Yurtia Faf in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly.
3,000,000 Sterling Commerce options	Sam Wyly 3/7/96	Moberly Limited	Options exercised between March 2000 and September 2001. Sam Wyly transferred options to Crazy Horse Trust which transferred them to Moberly in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly. Options exercised April 1998 and January 1999.

**Parts III and IV: 1999 AND 2002 TRANSFERS OF STOCK OPTIONS FOR CASH**

<b>Transfer Date</b>	<b>Assets</b>	<b>Transferor and Transferee</b>	<b>Cash Paid</b>
9/30/1999	1,525,000 Sterling Software options (converted to 859,185 CA options in 2000)	Sam Wyly to East Carroll Limited	\$13,668,880
9/30/1999	200,000 Sterling Software options (converted to 112,680 CA options in 2000)	Sam Wyly to Greenbriar Limited	\$1,771,400
9/30/1999	800,000 Sterling Software options (converted to 450,720 CA options in 2000)	Stargate, Ltd (partnership of which Charles Wyly is general partner) to Quayle Limited	\$7,170,560
9/30/1999	100,000 Sterling Software options (converted to 56,340 CA options in 2000)	Stargate, Ltd to Elegance Limited.	\$885,700
9/30/1999	462,500 Sterling Commerce options	Sam Wyly to Greenbriar Limited	\$2,357,657
9/30/1999	250,000 Sterling Commerce options	Stargate, Ltd. to Elegance Limited	\$1,274,409
<b>Transfer Date</b>	<b>Assets</b>	<b>Transferor and Transferee</b>	<b>Cash Paid</b>
7/23/2002	859,185 CA options (converted from 1,525,000 Sterling Software options in 2000)	Sam Wyly to Greenbriar Limited	\$2,213,776
7/23/2002	112,680 CA options (converted from 200,000 Sterling Software options in 2000)	Sam Wyly to Greenbriar Limited	\$329,026
7/23/2002	450,720 CA options (converted from 800,000 Sterling Software options in 2000)	Stargate, Ltd. to Quayle Limited	\$1,161,325
7/23/2002	56,340 CA options (converted from 100,000 SSW options in 2000)	Stargate, Ltd. to Quayle Limited	\$164,513

The Wyls have contended that they did not escape taxes on their compensation income; they merely deferred the taxes due until the annuity payments began. More than ten years passed from when the first stock option went offshore in 1992, until the first annuity payment was made in 2003. To date, about \$35 million in annuity payments have been made and presumably included in Wyly taxable income. That means the bulk of the stock option compensation, about \$124 million out of \$190 million, remains offshore and untaxed. Moreover, the first and, to date, only default on a promised annuity payment took place in November 2005. If more follow, many millions of dollars of untaxed compensation may remain offshore and untaxed.

This case history is not one in which the Wyls sent assets offshore to purchase an annuity from an independent party, kept their distance, and waited for the annuity payments to begin. As other sections in the Report show, the Wyls and their representatives continually exercised direction over the offshore assets, directing when the stock options should be exercised, how the proceeds should be invested, and what should be done with the resulting cash. In response, the offshore entities invested their untaxed dollars in Wyly-related business ventures, acquired U.S. real estate, financed the construction of multiple residences, and purchased furnishings, artwork, and jewelry used by Wyly family members.

The next section explains how the offshore corporations, under the direction of Sam and Charles Wyly, converted the 17 million stock options and warrants into tradeable securities and then into hundreds of millions of untaxed offshore dollars.

### **(3) Converting U.S. Securities into Offshore Cash**

From 1992 to 2002, Wyly-related offshore corporations took possession of about 17 million stock options from three publicly traded companies, Michaels, Sterling Software, and Sterling Commerce, at which Sam and Charles Wyly were directors and large shareholders. Using U.S. securities firms, the offshore corporations exercised many of these stock options and took possession of the shares. Over the following years, the offshore entities sold some shares, pledged others to obtain multi-million-dollar loans, and used still others to buy new securities or hedge against drops in the stock price. The decisions to engage in these securities transactions were made by the Wyls and their representatives, and conveyed by the trust protectors to the offshore trustees who implemented them.

The Wyls did not report or pay taxes on any of the trusts' investment gains, even though the U.S. tax code requires income earned by a trust controlled by a U.S. person who provided the trust assets or is a trust beneficiary to be attributed to that U.S. person for tax purposes. The Wyls also did not include the stock holdings of the offshore entities in their filings with the SEC until 2005, even though, as large shareholders, the Wyls were required to disclose all of the shares they beneficially owned as well as shares held by groups with whom they acted in concert to buy and sell the securities. Wyly representatives helped the offshore entities avoid and circumvent SEC disclosure requirements for major shareholders, told U.S. financial institutions to treat them as exempt from SEC trading restrictions on corporate affiliates, and helped the offshore entities conduct securities transactions during periods in which the Wyls may have had material nonpublic information.

The U.S. securities brokers who carried out securities transactions for the Wyly-related offshore entities failed, with one exception, to investigate and fully understand the relationship between the offshore entities and the Wyls. They treated the offshore entities as exempt from SEC trading restrictions on affiliates, despite knowing that the Wyls directed their investment activities. The three public corporations whose securities were traded by the offshore entities failed to disclose the offshore holdings in their SEC filings, even though they knew the offshore entities had large holdings and were associated with the Wyls. As a result, for many years until 2005, U.S. securities regulators and the investing public were unaware of the extent of the Wyly-related offshore stock holdings and trading activity.

During the period examined in this Report, Sam and Charles Wyly were directors and large shareholders of three publicly traded corporations and, under U.S. securities law, were subject to certain disclosure requirements, trading restrictions, and insider trading prohibitions. A key issue is whether, by sending millions of stock options to offshore entities whose investments they directed, the Wyls were using offshore secrecy laws to circumvent basic principles in the United States intended to ensure fair and transparent markets, including disclosure requirements for major shareholders, trading restrictions on privately acquired shares, and prohibitions against trading on nonpublic information.

#### **(a) Trading Offshore**

The Wyly-related offshore entities used the services of three securities firms, Credit Suisse First Boston (CSFB), Lehman Brothers,

and the securities divisions of Bank of America, to convert their stock options and warrants into shares and undertake a complex array of securities transactions that, over time, generated millions of dollars in investment gains. These sophisticated offshore trading strategies were not initiated, devised, or directed by the trustees of the offshore trusts or by the directors or officers of the offshore corporations that held the stock. Instead, Sam and Charles Wyly and their representatives routinely reviewed the trading options available to the offshore entities, decided on the securities transactions that should take place, and coordinated the offshore transactions. At times, they also took steps to coordinate offshore and domestic trades of the same stock.

A key facilitator of the securities trades conducted by the Wyly-related offshore entities was Louis Schaufele, a U.S. stock broker based in Dallas, Texas.<sup>747</sup> The Wyly-related offshore entities first used his services in 1992, when they asked CSFB to arrange their initial stock option exercises.<sup>748</sup> Mr. Schaufele soon became the primary stock broker for all of the Wyly-related offshore entities, carrying out numerous securities transactions for them over the next thirteen years. He changed jobs twice during this period, moving from CSFB to Lehman Brothers in 1995, and then to Bank of America in early 2002. Both times, he took the Wyly-related offshore accounts with him when he moved, apparently after obtaining the consent of the Wyllys.<sup>749</sup> Throughout this period, as explained below, he was in frequent contact with Wyly representatives as well as with Sam, Charles, and other Wyly family members.

Mr. Schaufele helped the Wyly-related offshore entities engage in a wide range of complex securities transactions. For example, he helped them exercise the stock options they had acquired, at times arranging for

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<sup>747</sup> Mr. Schaufele first began working for the Wyllys around 1990, when their previous broker, Drexel Burnham Lambert, filed for bankruptcy, and the Wyllys contacted the Dallas office of First Boston Securities, looking for a new broker. Subcommittee interview of Mr. Schaufele (6/28/05). Mr. Schaufele was assigned to call on Sam Wyly and opened several domestic accounts for the Wyly family at First Boston. His primary contact was Ms. Robertson. *Id.*

<sup>748</sup> Mr. Schaufele told the Subcommittee that he first became involved with the offshore entities when, in 1992, Ms. Robertson asked him for help in finding a foreign bank to open accounts for them. He said that he traveled at least twice to Switzerland with Ms. Robertson to meet with banks, including Credit Suisse, a Swiss financial institution that was then the majority shareholder of First Boston. The two firms formally merged in 1997, taking the name of Credit Suisse First Boston.

<sup>749</sup> See, e.g., 2/19/02 email from Ms. Boucher to Ms. Robertson (PSI\_ED00009278-79) ("Lou's move to BofA [Bank of America] was final last week. Sam & Charles have consented to moving all their stuff with him. ... Lou is planning on travelling to IOM to ensure everything is properly executed and pay everyone over there a visit.").

them to borrow millions of dollars from CSFB or Lehman Brothers to buy the specified shares.<sup>750</sup> Once the offshore entities took possession of the shares, he helped them obtain margin and other loans,<sup>751</sup> and

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<sup>750</sup> See, e.g., 4/22/92 letters exercising stock options owned by East Baton Rouge, Roaring Creek, and Tensas to buy 510,000 Michaels shares, using more than \$1.5 million supplied by CSFB (PSI00028461-63); 5/12/92 letters exercising stock options owned by East Carroll, Little Woody, and Roaring Fork to buy one million Sterling Software shares, using more than \$6.2 million supplied by CSFB (PSI00135895, 897, 900-01); 9/1/95 documents discussing the exercise of stock options owned by Greenbriar, Quayle, and Sarnia Investments to buy one million Sterling Software shares, using more than \$18.8 million supplied by Lehman Brothers (CC021900-05). See also undated document listing all 1996 stock options obtained by the offshore entities and showing the dates on which those stock options were exercised (PSI\_ED00093578-83).

<sup>751</sup> See, e.g., May 1992 CSFB statements referencing margin accounts for East Baton Rouge and Tensas (CSFB0004205, 4221); 8/30/95 letter establishing a Lehman margin account for Greenbriar (CC021746) (authorizing the margin account and an exercise of 500,000 Sterling Software options “using funds to be borrowed on margin”); 8/31/95 letter establishing \$10 million multicurrency loan facility for Greenbriar (CC021969-71); 9/12/95 internal Lehman memorandum journaling one million Sterling Software shares owned by Greenbriar, Quayle, and Sarnia Investments to a Lehman account as collateral for loans (CC021548); 12/18/95 internal Lehman memorandum (CC038440) (“I intend to ask credit for permission to increase loan amounts to Devotion and Elegance. On 13 November 1995, these two Isle of Man counterparties bought two year calls on 500,000 shares of Sterling Software at a strike price of \$41 .... We agreed to lend them 50% of the cost of these calls .... Sterling Software is now trading above \$55 per share .... [T]he outstanding loan value is \$2.3 million.”); 6/20/97 internal Lehman email discussing Sterling Software and Sterling Commerce stock sales and use of sale proceeds to pay off millions of dollars in outstanding loans issued to Greenbriar and Sarnia Investments (CC021859); 8/6/98 memorandum discussing status of \$8 million Lehman Brothers Finance loan to Greenbriar (CC021557); 1/31/99 internal Lehman email listing “collateral positions” involving hundreds of thousands of Sterling Software and Sterling Commerce shares pledged by Greenbriar, Quayle, and Sarnia Investments to secure loans from Lehman Brothers (CC021928).



participate in various stock sales,<sup>752</sup> stock collars,<sup>753</sup> call options,<sup>754</sup> equity swaps,<sup>755</sup> prepaid forward contracts,<sup>756</sup> and other transactions.

<sup>752</sup> See, e.g., May 1992 CSFB statement for East Baton Rouge showing 50,000 Michaels shares sold for \$1.1 million (CSFB0004221); May 1992 CSFB statement for Tensas showing 60,000 Michaels shares sold for about \$1.3 million (CSFB0004205); December 1992 CSFB statement for Little Woody showing 57,500 Sterling Software shares sold for about \$1.2 million (CSFB0004128); 1/11/96 fax directing sale by East Carroll of 116,667 Sterling Software shares (CC020032); March 1996 Lehman statement for Soulicana showing Sterling Software shares sold for about \$14.5 million (CC004305-08) and undated chart entitled "Tyler Trust Soulicana Limited" (PSI00130274)(showing 2/26/96 exercise of 300,000 Sterling Software stock options and March sales of the shares); May 1996 Lehman statement for Devotion showing Sterling Software shares sold for \$31 million (CC011688); 3/19/97 sale of 300,000 Michaels shares from Greenbriar to East Baton Rouge and East Carroll for \$5.3 million (CC021552); June 1997 Lehman statement for Greenbriar showing Sterling Software shares sold for about \$26 million (CC000083-88); 3/24/98 letter directing sale of Michaels, Sterling Software, and Sterling Commerce shares from Quayle (CC027192) and 4/14/98 fax reporting sales proceeds of about \$10 million (CC027192, 262-63); 9/30/99 sales of Sterling Software and Sterling Commerce stock options by Sam Wyly to East Carroll and Greenbriar for more than \$17 million (CC019988, 21648, 21720) and by Stargate Ltd., associated with Charles Wyly, to Elegance and Quayle for more than \$9 million (CC019661, 66, 24086); 1/21/00 "Summary of Michaels exercises/sales" showing that Yurta Faf sold about 596,000 Michaels shares in January and February 2000, for about \$11.2 million (PSI\_ED00071925); undated chart, likely from 2001, entitled, "Michaels Off-Shore Trading" (HST\_PSI007055)(listing Michaels stock sales from August 2000 to November 2001).

<sup>753</sup> See, e.g., 8/30/95 fax on collar involving Sterling Software shares and the Bulldog and Pitkin Trusts (PSI00117939); 10/27/95 Lehman document discussing collars involving Greenbriar, Quayle, and Sarnia Investments (CC021995-96); 11/3/95 Lehman memorandum discussing Sterling Software collar (PSI00119018); 1/2/96 memorandum proposing new collars for "the offshore entities" (CC038759); 2/9/99 summary of proceeds from Sterling Software and Sterling Commerce collars involving Greenbriar, Quayle, and Sarnia Investments (CC038824-25). A collar is a combination of put and call options that can limit the risk that the value of the relevant shares will increase or decrease.

<sup>754</sup> See, e.g., 8/20/96 memorandum from Mr. Schaufele to Mr. French and Ms. Robertson with copies to Sam and Evan Wyly discussing Michaels calls "that you are short"(CC039284); 12/18/95 internal Lehman memorandum (CC038440)("On 13 November 1995, these two Isle of Man counterparties [Devotion and Elegance] bought two year calls on 500,000 shares of Sterling Software at a strike price of \$41."); 10/28/96 Lehman memorandum (CC038283)(reporting that Elegance and Devotion sale of 500,000 Sterling Software calls generated \$7.4 million and referencing sale of Sterling Commerce calls to take place the next day); undated handwritten document, likely from late 1997, listing multiple calls involving Greenbriar, Quayle, and Sarnia Investments, and long and short positions on hundreds of thousands of Sterling Software and Sterling Commerce shares (CC022085-87); 3/17/98 letter discussing call and put option transactions and related loans involving East Carroll and Sterling Software and Sterling Commerce shares (CC020302-04); 6/15/01 email from Ms. Boucher to Ms. Hennington (PSI\_ED00013896)(discussing Sarnia Investments plan to buy \$2.5 million worth of "\$35 CA calls"); 6/15/01 call option documentation involving Computer Associates shares and Greenbriar (CC021913); 6/21/01 call option documentation involving Computer Associates shares and Sarnia Investments (CC017267). A call option is an agreement that gives an investor the right, but not the obligation, to buy a security at a specified price within a specified time period.

<sup>755</sup> See, e.g., 7/22/99 memorandum from Mr. Schaufele to Ms. Robertson suggesting swap involving Michaels shares (CC026148)("The offshore entity would be a seller and the buyer would be Lehman. As Lehman bought stock, they in turn would enter into a swap arrangement with the company at the current price. This would offer the protection from upward price movement. The offshore entity could sell stock without pressuring the market."); and detailed proposal at PSI\_ED00046395-401. See also 10/8/99 "Equity Swap (LONG)" involving

The number, range, and size of the securities transactions going on at one time is illustrated, for example, by a December 1995 chart prepared by Lehman solely on “Sterling Software Trades” related to Sam Wyly, listing \$38 million in outstanding loans to eight Wyly-related offshore corporations; two “zero cost collars” with a total market value in excess of \$7.4 million; two sets of call options involving 500,000 shares; and a “Hedge” involving about 495,500 shares.<sup>757</sup> Many of these securities transactions were carried out by Credit Suisse or Lehman Brothers Finance in Switzerland; some also used accounts in London and the United States.<sup>758</sup>

The evidence indicates that these complex, multi-million-dollar securities transactions were not devised or directed by the offshore trustees or the officers or directors of the offshore corporations. The transactions were instead the result of decisions made by Sam and Charles Wyly after consulting with their advisers and broker, Mr. Schaufele. Mr. Schaufele told the Subcommittee that he typically spoke with a Wyly representative, such as Ms. Hennington or Ms. Boucher, but it was not uncommon for him to speak directly with Wyly family members, such as Sam Wyly.<sup>759</sup> He said that, for complex securities transactions, he often worked out the details of a transaction with Ms. Hennington or Ms. Boucher. After agreement was reached, he typically prepared a term sheet which he provided to Ms. Hennington or Ms. Boucher and to the relevant offshore trustee. He said that he would then discuss the transaction with the offshore trustee who, by the end of the

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Sterling Software stock and Greenbriar (CC022040-41); 10/8/99 “Equity Swap (LONG)” involving Sterling Software stock and Sarnia Investments (CC017344-45); 10/8/99 “Equity Swap (LONG)” involving Sterling Software stock and Quayle (CC029349-50); 1/25/00 fax from Lehman Brothers Finance to Greenbriar on a “Reset of SSW swap” (CC021686) with similar resets on 3/3/00 (CC021920) and 6/5/00 (CC021692); 3/2/00 “Equity Swap (LONG) Amendment” involving 2 million Sterling Software shares and Greenbriar, Quayle, Moberly, Roaring Fork and Sarnia Investments (CC031181-83); and 3/3/00 “Equity Swap Amendment (SSW)” involving 1.5 million Sterling Software shares and Greenbriar, Moberly, and Sarnia Investments (CC031175-77). An equity swap is a swap in which the payments on one or both sides are linked to the performance of specified equities or an equity index.

<sup>756</sup> See, e.g., 2002 prepaid forward contract involving 800,000 Michaels shares, Devotion and \$25 million, described in 4/7/05 amended Schedule 13D filed by the Wyls with the SEC at 4 and in items 4 and 7. A prepaid forward contract is an agreement in which the investor receives an up-front payment in exchange for a commitment to deliver securities in the future.

<sup>757</sup> See 12/18/95 Lehman fax to Mr. Schaufele, including 12/12/95 chart entitled “Sterling Software Trades” (CC038439-42). See also undated chart, likely from 6/97, entitled “Offshore Stock Analysis” showing ownership by the Wyly-related offshore entities of Sterling Software, Michaels, and Sterling Commerce shares, options, and collars (PSI00087628).

<sup>758</sup> See, e.g., 10/11/95 chart prepared by Lehman Brothers showing transactions in New York, London, and Geneva offices (CC038765).

<sup>759</sup> Subcommittee interview of Mr. Schaufele (7/26/06).

conversation, would typically provide a verbal or written authorization to proceed. He said that it was typical for the offshore trustee to have already spoken with Ms. Boucher or one of the other trust protectors prior to the time Mr. Schaufele made this contact.

Mr. French, Ms. Robertson, and Ms. Hennington each told the Subcommittee that they did not themselves initiate, devise, or direct the securities transactions involving the offshore entities.<sup>760</sup> Mr. French, Ms. Robertson, and Ms. Hennington each told the Subcommittee that, in their experience, the offshore trustees also did not initiate or devise the securities transactions or commit trust assets without seeking the approval of the trust protectors. Mr. French and Ms. Robertson told the Subcommittee that, in their experience, the key decisions on securities investments were initiated or approved by Sam or Charles Wyly. These decisions were then communicated by Wyly representatives to Mr. Schaufele who worked with them to iron out the details of the transactions. After agreement was reached on how the transactions would proceed, Mr. French and Ms. Robertson, in their role as trust protectors, then “recommended” that the offshore trusts participate in the transactions.<sup>761</sup> In response, the offshore trustees or the officers or directors of the corporations supplied any needed funds, authorizations, or documents.

Numerous documents demonstrate that Sam and Charles Wyly, and their representatives, were actively involved with the offshore securities transactions, and that the Wyls made the decisions to buy and sell securities. For example, in April 2000, Sam Wyly’s son Evan Wyly sent Ms. Boucher an email stating: “Sam recommends that the trustees exercise and sell the remainder of the Michaels options that expire this summer. Sell at \$40 or better.” Ms. Boucher responded: “I did confirm with the trustees this morning, and they are proceeding on the offshore

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<sup>760</sup> Subcommittee interviews of Mr. French (6/30/06), Ms. Robertson (3/9/06), and Ms. Hennington (4/26/06).

<sup>761</sup> See, e.g., detailed recommendations from trust protectors to offshore trustees directing specific securities transactions, including a 4/20/92 recommendation by Mr. French and Ms. Robertson to Lorne House for three specified offshore corporations to exercise a specified number of options and sell a specified number of shares at a minimum of \$20 per share (PSI00081460-64); 3/13/95 recommendation by Mr. French to Lorne House for six specified offshore corporations to use 900,000 Sterling Software shares on a collar and related loans (PSI-WYBR00292-93); 1/19/99 recommendation by Ms. Boucher to IFG for a specified offshore corporation to exercise specified options and sell the shares to another specified offshore corporation (CC040417); 1/11/00 recommendation by Ms. Boucher to IFG for Yurta Faf and another offshore corporation to sell 200,000 Michaels shares at “\$30 or better” (PSI\_ED00044236); 10/25/01 recommendation by Ms. Robertson to Trident for Quayle to sell 100,000 Michaels shares at “\$52 or better” (MAV008375).

options, selling at \$40 or better.”<sup>762</sup> Later, Ms. Boucher sent an email to Sam and Evan Wyly stating: “I received a fax from Charles tonight indicating that Sam has cancelled his request to exercise and sell the offshore options at \$40 or better – please confirm. ... Please let me know asap, so I can amend the recommendation with the Trustees.” Evan responded: “Yes, I spoke with Sam, who has spoken with Charles. We do not recommend re-booking the 10,000 shares [already sold], but we do recommend canceling further sales by the Trustees.”<sup>763</sup> This email exchange shows that the persons making the decisions about these stock sales were not the offshore trustees, but Sam and Charles Wyly.

On another occasion a few months later, Ms. Boucher wrote: “I spoke to Sam today, he wants us to proceed with selling 200,000 Michaels Stores shares from offshore to aid in raising funds for Ranger/Precept projects.”<sup>764</sup> On another occasion, Ms. Boucher sent an email asking Charles Wyly for his decision on whether Mr. Schaufele should liquidate certain government securities owned by Quayle to obtain cash needed for a stock option exercise.<sup>765</sup> At another point, Evan Wyly told Ms. Boucher, “I just spoke to Sam, and he recommends proceeding with the exercise and sale of the \$12.50 Michaels options now.” Ms. Boucher responded: “I’ll speak to Shari to obtain the protector’s recommendation and get it started.”<sup>766</sup> Other documents show Mr. Schaufele seeking Wyly approval of specific offshore securities transactions.<sup>767</sup> These and other documents demonstrate that it was Sam and Charles Wyly, rather than the offshore trustees or

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<sup>762</sup> 4/26/00 emails between Ms. Boucher and Evan Wyly (PSI\_ED00043559).

<sup>763</sup> 4/26 and 4/27/00 emails between Ms. Boucher, Evan Wyly and others (MAV010782-83).

<sup>764</sup> 9/15/00 email from Ms. Boucher to Ms. Robertson and Evan Wyly (MAV010831).

<sup>765</sup> 12/23/99 email from Ms. Boucher to Charles and Evan Wyly and Ms. Robertson on Michaels options (MAV010726)(“Lou Schaufele called today, and if we want to liquidate US Government Agencies for CW entities – (Quayle Limited) for the option exercise then he would like to liquidate these today. ... Let me know how you feel about this – I need to get back with Lou today.”).

<sup>766</sup> 1/10/00 emails exchanged among Evan Wyly, Ms. Boucher, Ms. Robertson, and others (PSI\_ED00070164-65).

<sup>767</sup> See, e.g., 8/22/95 fax from Mr. Schaufele to Sam Wyly proposing Sterling Software collar and call alternatives for Maverick, Pitkin and Bulldog (CC038776)(“Sam, Call me when you have time to discuss.”); 10/4/95 fax from Mr. Schaufele to Sam Wyly (CC038769)(suggesting new Sterling Software collar and stating: “[p]lease call me if you would like to discuss.”); 5/13/96 memorandum from Mr. Schaufele to Sam and Evan Wyly discussing alternatives for Sterling Software collars and long positions (CC039763-65); 1/16/97 memorandum from Mr. Schaufele to Sam and Charles Wyly (CC038779-80)(explaining availability of certain hedging transactions and warning that “the window may close soon on some methods of monetization for large shareholders of common stock”).

corporate officers and directors, who exercised actual direction over the securities transactions undertaken by the offshore entities.<sup>768</sup>

Additionally, a number of documents suggest that there was coordination between the offshore securities transactions and transactions involving securities owned by the Wyllys domestically.<sup>769</sup>

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<sup>768</sup> See, e.g., 10/5/92 memorandum from Ms. Robertson to Lorne House (PSI00135818)(informing Lorne House that Sam and Charles Wyly “wish to sell private company stock to the foreign corporations. ... Do you need to know anything other than the company name, number of shares and purchase price?”); 8/20/95 memorandum from Mr. Schaufele to Mr. French and Ms. Robertson with copies to Sam and Evan Wyly discussing Michaels calls “that you are short”; undated fax, likely in 1995, from Mr. Schaufele to “Shari/Mike/Sam” on Sterling Software puts and calls (CC038772); 1/2/96 fax from Mr. Schaufele to Mr. French and Ms. Robertson discussing Sterling Software collar held by “the offshore entities” (CC038759); 8/20/96 memorandum from Mr. Schaufele to Mr. French and Ms. Robertson with copies to Sam and Evan Wyly discussing Michaels calls and requesting a telephone call to discuss Sterling Commerce and Sterling Software (CC039284); 1/11/99 email from Ms. Robertson to Ms. Boucher (PSI\_ED00046560)(“I have begun discussions with Lou to collapse the SSW/SE collars. ... Moberly needs to exercise 300,000 shares of SE and sell the shares to Greenbriar/Samia prior to 2/9/98. ... Lou assures me ... we can come to terms on what the sale price of the stock is and there will be no trading in the marketplace.”); 1/19/00 email from Ms. Boucher to Sam and Evan Wyly and Ms. Robertson (MAV010737-38)(informing them that “Lehman’s has been cleared to start on the next 200,000 share block” of sales of Michaels options held by offshore entities); 3/2/00 email from Ms. Robertson to Ms. Boucher on “CW,” meaning Charles Wyly (PSI\_ED00047852)(“He’s not ready to decide what he’s doing on SSW options. Will let us know.”); 7/27/00 emails between Ms. Boucher and Evan Wyly (MAV010800-01)(forwarding message from Mr. Schaufele about exercising stock options for Quayle, Souleiana, Yurta Faf and others on a certain date; Evan responded: “OK with me”); 5/23/01 email from Ms. Boucher to Sam and Evan Wyly (PSI00088927)(updating the Wyllys on plans for the offshore entities to sell Scottish Re shares and stating that the protectors were “prepared to recommend” that the trustees sell the shares “at no less than \$15 per share”); 10/4/01 emails on Quayle sales of Michaels shares (PSI\_ED00000660)(after learning Lehman had sold 82,500 Michaels shares for Quayle, Ms. Hennington asked her colleague: “Would you let Mr. Wyly know this.”); 10/4/01 email from Mr. Schaufele to a Lehman colleague (CC031033)(“I spoke with the family last night, they do understand that we will be collaring 20% more stock than Devotion would be purchasing. ... Here, is a negative which they did not bring up but I bet Sam picks up on it. If Sam sells into the open market he must comply with rules of an insider on selling versus he can cross it to Devotion.”). See also documents cited in discussions below.

<sup>769</sup> See, e.g., 8/22/95 Lehman memorandum from Mr. Schaufele to Sam Wyly (CC038776)(discussing existing and proposed collar involving Sterling Software shares and Maverick Entrepreneurs, with a handwritten notation from Mr. Schaufele stating: “The #’s for Bulldog/Pitkin would be similar but the net borrow is less due to the fact that we are only stepping the put up from 36 [to] 42”)(emphasis in original); 9/28/99 chart entitled “Analysis of Options Shares as of September 24, 1999” (PSI00064844)(listing Michaels shares for offshore and onshore entities); 1/12/00 email from Ms. Boucher to Sam and Evan Wyly and Ms. Robertson (MAV010735) (discussing sale of Michaels shares by Yurta Faf and others after which Ms. Boucher wrote: “Evan & Sam – I discussed the transactions with Elaine today and advised her that once we are finished, you may be interested in starting on some domestic options, or alternatively exploring the sale of them to offshore.”); 1/10/00 emails exchanged among Evan Wyly, Ms. Boucher, Ms. Robertson, and others (PSI\_ED00070164-65)(Ms. Boucher wrote to Evan Wyly that Ms. Robertson “thought that you and Sam were looking at an exercise and hold scenario for the Michaels options ... because of domestic liquidity issues, that you might want to look at having offshore acquire the domestic options, and exercise and hold the stock offshore”); 4/26 and 4/27/00 emails between Ms. Boucher and Evan Wyly on the sale

For example, a 1997 memorandum from Ms. Robertson to Sam and Charles Wyly, among others, presented two different scenarios on how to proceed with certain Sterling Software and Sterling Commerce collars.<sup>770</sup> The memorandum analyzed each scenario in terms of its cashflow and tax implications, and presented the analysis for both onshore and offshore holdings related to Sam and Charles. Mr. Schaufele told the Subcommittee that he often pitched ideas for securities transactions to the “whole Wyly group,” and they would decide whether to do the transaction with an onshore or offshore entity.<sup>771</sup> On an occasion in 2001, Ms. Boucher wrote to the Wyly family office about certain securities transactions to be undertaken by the offshore entities: “We are only doing this from offshore, but you should be aware. I’ve advised Shari as protector and she is on board. I’ve also cleared it ... to ensure we weren’t doing anything to[o] close to the date of Sam’s planned activities.”<sup>772</sup> On another occasion, in 2000, when Lehmans sold 10,000 Michaels shares on behalf of an offshore entity, and Sam Wyly changed his mind about selling the offshore shares, Lehman apparently offered to rebook the sales and attribute them to a Wyly domestic entity.<sup>773</sup>

Other documents demonstrate coordination of securities transactions undertaken by offshore corporations owned by different offshore trusts. For example, Greenbriar, Quayle, and Sarnia Investments, each of which is owned by a different IOM trust, undertook a number of joint or parallel securities transactions, including exercising stock options for one million Sterling Software shares on September 1, 1995, participating in 1995 Sterling Software collars, and participating in 1999 Sterling Software equity swaps.<sup>774</sup> Similarly, Devotion and

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of Michaels shares (MAV010782)(Ms. Boucher wrote: “Charles’ fax also had some notes indicating that we are to sell domestic first and he has an order of: Evan, Kelly, Cheryl, Sam, Charles. There was a note that Donnie was finished selling domestically. Please confirm if this is how we should proceed?” Evan responded: “Yes .... [We] recommend canceling further sales by the Trustees. Please proceed with sales domestically at 40 or better.”).

<sup>770</sup> 11/19/97 memorandum from Ms. Robertson to Sam, Charles and Evan Wyly and Donald Miller on “SSW and SE Collars” (PSI\_ED00065891-900).

<sup>771</sup> Subcommittee interview of Mr. Schaufele (7/26/06).

<sup>772</sup> 6/15/01 email from Ms. Boucher to Ms. Hennington on “transaction we are doing in the trusts re: CA” (PSI\_ED00013896).

<sup>773</sup> See 4/26 and 4/27/00 emails between Ms. Boucher, Evan Wyly and others (MAV010782-83)(Ms. Boucher wrote: “I also just spoke with Lehmans, and they can rebook the 10,000 Michaels that we did today for another account (in the domestic system) if we want. I need to let them know in the morning.”); 4/26/00 emails between Ms. Boucher and Sam and Evan Wyly on the sale of these Michaels shares (PSI\_ED00043559).

<sup>774</sup> Greenbriar is owned by the Delhi International Trust, Quayle is owned by the Castle Creek International Trust, and Sarnia Investments is owned by the Lake Providence International

Elegance participated in joint or parallel securities transactions to purchase 500,000 Sterling Software calls and to purchase two million Michaels shares in 1997.<sup>775</sup> These and other documents indicate there were many occasions on which the securities transactions of the purportedly independent offshore entities were, in fact, coordinated.<sup>776</sup> Mr. Schaufele told the Subcommittee that he was often told by Ms. Boucher that more than one offshore corporation would be engaging in the same type of transaction, and he would process the transactions together.<sup>777</sup> Some documents suggest that the Wyls may also have provided direction on how the offshore corporations were to vote their shares on proxy issues.<sup>778</sup>

The securities transactions engaged in by the offshore corporations and trusts generated hundreds of millions of dollars in profits. The Wyls, on advice of counsel, did not pay U.S. tax on any of these trading gains, contending that the offshore trusts were independent while, at the same time, exercising significant direction over the trusts' assets and

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Trust. See documents cited in the footnotes to this section of the Report describing securities transactions undertaken by all three corporations.

<sup>775</sup> Devotion is owned by the LaFourche Trust, and Elegance is owned by the Red Mountain Trust.

<sup>776</sup> See, e.g., 11/19/98 fax from Sarnia Investments to Mr. Schaufele (CC040447) ("Please accept this fax as your instruction to sell 113,074 shares of Sterling Commerce (SE). In the event that the stock is called away at \$27.75 (call price) please purchase the options from one of the other trusts to cover the call."); 1/11/99 email from Ms. Robertson to Ms. Boucher (PSI\_ED00046560) ("I have begun discussions with Lou to collapse the SSW/SE collars. ... Moberly needs to exercise 300,000 shares of SE and sell the shares to Greenbriar/Sarnia prior to 2/9/98."); 10/8/99 email from Ms. Boucher to Sam and Evan Wyly and Ms. Robertson on Sterling Software stock (MAV007713) (Ms. Boucher wrote: "Lehmans has started the transaction"; Mr. Schaufele wrote: "We ... will be crossing the stock purchased by Moberly and Quayle into the swap."); 3/2/00 "Equity Swap (LONG) Amendment" involving 2 million Sterling Software shares and Greenbriar, Quayle, Moberly, Roaring Fork, and Sarnia Investments (CC031181-83); 9/4/01 email from Michele Crittenden of Banc of America Securities to Ms. Boucher (LBE000346) (discussing instructions to sell Michaels shares owned by Quayle and Sarnia Investments, which are owned by different offshore trusts; Ms. Crittenden wrote: "Do we complete Quayle first or do we split what we do today? Just let me know how you would like me to handle.").

<sup>777</sup> Subcommittee interview of Mr. Schaufele (7/26/06).

<sup>778</sup> See, e.g., 5/12/92 fax from Lorne House to Ms. Robertson (PSI00135882) ("Please ask the committee of protectors who we should appoint as proxy for the Michaels Stores annual general meeting."); 5/29/97 internal Lehman memorandum discussing Michaels proxy vote (CC039534) ("The Wyly accounts have appx. 2mm shares collared and I believe these shares are held in street name with Lehman Brothers Finance [in Switzerland]. Amy Browning at the Wyls called in a panic about who was supposed to vote those shares -- Lehman or them themselves. ... Rich Ladd is investigating, but since the Wyls are a little nervous, I thought I better get you involved." Handwritten notation states: "Devotion ... 1,183,333"); 9/11/98 fax from IFG to Mr. Schaufele forwarding signed proxy votes from East Baton Rouge and East Carroll (CC019296-97) ("As requested in the fax received overnight from your office, please find herewith duly signed proxies in respect of the forthcoming meeting of Michaels Stores Inc.").

investment activities. U.S. tax law requires a foreign trust that is controlled by a U.S. person who funded or is a beneficiary of the trust to attribute its income to the U.S. person for tax purposes.<sup>779</sup> No such attribution took place here. As explained in later sections of this Report, the offshore entities used the untaxed dollars generated by the securities transactions to advance the Wyllys' business and personal interests, including Wyly-related hedge funds, Wyly-related business investments, U.S. real estate, and furnishings, artwork, and jewelry used by Wyly family members.

#### **(b) U.S. Securities Law**

The offshore trading examined in this case history raises a second set of concerns in addition to those related to nonpayment of tax. These concerns focus on the fact that the offshore entities were given stock options and warrants, and conducted most of their trades, using shares of U.S. publicly traded corporations at which the Wyllys were directors and major shareholders. A key issue is whether, by trading these securities through offshore entities whose investments they directed, the Wyllys were using offshore secrecy laws to circumvent basic principles of U.S. securities laws intended to ensure fair and transparent markets, including disclosure requirements for major shareholders, trading restrictions on privately acquired shares, and prohibitions on trades by persons with inside information. Of equal concern are the actions taken by the public corporations, lawyers, and brokers who facilitated these securities transactions.

To analyze these issues, a short summary of key U.S. securities laws is provided, followed by a discussion of the securities trades that took place in this case history.

#### **(i) Background on U.S. Securities Law**

To ensure fair and open capital markets and build investor confidence, U.S. securities laws impose a number of disclosure requirements and trading restrictions on publicly traded corporations, corporate insiders, and their affiliates. In discussing U.S. securities law, the Supreme Court has explained: "A fundamental purpose, common to these statutes, was to substitute a philosophy of full disclosure for the philosophy of caveat emptor [buyer beware] and thus to achieve a high standard of business ethics in the securities industry."<sup>780</sup> Three key

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<sup>779</sup> Sec 26 U.S.C. §§ 671-78.

<sup>780</sup> SEC v. Capital Gains Research Bureau, 375 U.S. 180, 186 (1963).



securities provisions at issue in this case history are Section 13(d) of the Securities and Exchange Act of 1934, which provides disclosure obligations for major shareholders of publicly traded corporations; Section 5 of and Rule 144 under the Securities Act of 1933, which restrict the trading of unregistered securities obtained by corporate affiliates in nonpublic transactions; and Section 16 of and Rule 10b-5 under the Exchange Act of 1934, which restrict trades using nonpublic information.

**Disclosure Obligations for Major Shareholders.** Section 13(d) of the Exchange Act of 1934 requires all shareholders who beneficially own more than five percent of a publicly traded corporation to file with the SEC a form called Schedule 13D disclosing the number of shares and the percentage of outstanding stock they own.<sup>781</sup> The purpose of this disclosure is to inform the investing public of the identity and the size of the holdings of major shareholders of a public corporation and their purpose for acquiring the securities. In addition, if a major shareholder's holdings fluctuate by more than one percent of the issuer's total stock, then the shareholder must file an amended Schedule 13D promptly after the transaction responsible for the change. This disclosure requirement alerts the investing public to actions taken by major shareholders to buy or sell a substantial number of shares.

Rule 13d-3 defines a "beneficial owner" of a security as "any person who, directly or indirectly, though any contract, arrangement, understanding, relationship, or otherwise has or shares: (1) Voting power which includes the power to vote, or to direct the voting of, such security; and/or, (2) Investment power which includes the power to dispose, or to direct the disposition of, such security." 17 C.F.R. § 240.13d-3(a). The Rule also provides that any persons who act as a group to acquire, hold, vote, or dispose of securities and who together exceed the five percent threshold must disclose the existence of the group and its stock holdings.<sup>782</sup>

To prevent circumvention of the disclosure obligation, the Rule states explicitly that any beneficial owner who attempts to evade filing a

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<sup>781</sup> Section 13 is codified at 15 U.S.C. § 78; the implementing regulation is Rule 13d-1(a), codified at 17 C.F.R. § 240.13d. Under some circumstances, persons may disclose substantially the same information on a Schedule 13G. See Section 13(g).

<sup>782</sup> Section 13(d)(3) states that "[w]hen two or more persons act as a partnership ... or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a 'person' for purposes of" the filing requirement. The implementing rules require any group whose members together beneficially own more than five percent of the relevant securities to report their ownership on a Schedule 13D. See 17 C.F.R. § 240.13d-1(k)(2), 17 C.F.R. § 240.13d-5(b)(1), and 17 C.F.R. § 240.13d-101.

Schedule 13D by creating or using a trust or other arrangement to divest themselves of ownership of the relevant securities “shall be deemed” to be a beneficial owner of those securities subject to the filing requirement.<sup>783</sup> Together these provisions impose a clear obligation on major shareholders of publicly traded corporations to disclose their stock holdings.

**Trading Restrictions on Affiliates with Privately Acquired Shares.** Section 5 of the Securities Act of 1933 requires that securities be registered with the SEC prior to their offer or sale, unless a requirement for an exemption is met.<sup>784</sup> The purpose is to ensure that only securities with full and fair disclosure are sold in interstate commerce. One effect of Section 5 is to prohibit the resale of any securities acquired in a private transaction from a publicly traded corporation or its affiliate, unless those securities are registered with the SEC or meet the requirements for a registration exemption. The purpose of this prohibition is to prevent issuing corporations and their affiliates from circumventing U.S. securities laws by transferring company shares through private transactions not open to the investing public and then reselling those securities on public exchanges.<sup>785</sup>

Rule 144 creates a safe harbor from Section 5’s prohibition on the public resale of privately acquired securities, but only if certain conditions are met.<sup>786</sup> The purpose of this Rule is to prohibit the creation of public markets in securities where adequate information is not available to the public. At the same time, where adequate current information is available to the public, the Rule permits the public sale of private, unregistered securities subject to volume restrictions. Generally, to qualify for the Rule’s safe harbor protections, the shareholder must hold the privately acquired securities for a designated period of time and then limit the number of shares sold per quarter.<sup>787</sup> The purpose of these

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<sup>783</sup> Rule 13d-3 states: “Any person who, directly or indirectly, creates or uses a trust ... or any other ... arrangement ... with the purpose or effect of divesting such person of beneficial ownership of a security ... as part of a plan or scheme to evade the reporting requirements of section 13(d) ... shall be deemed ... to be the beneficial owner of such security.”

<sup>784</sup> Section 5 is codified at 15 U.S.C. § 77e.

<sup>785</sup> Examples of private transactions in which shares are transferred outside of public offerings include private sales of stock and stock option grants in exchange for services.

<sup>786</sup> Rule 144 is codified at 17 C.F.R. § 230.144.

<sup>787</sup> Rule 144 creates two sets of rules, one for corporate affiliates and the other for non-affiliates. Generally, an affiliate must hold restricted shares for one year before re-selling them. Then, the amount of restricted securities sold during a three-month period may not exceed the greater of: (i) one percent of the outstanding shares; (ii) the average weekly volume of trading on all national exchanges during the previous four weeks; or (iii) the average weekly volume of

trading restrictions is to prevent a person who acquired shares from the issuing corporation or its affiliate in a private transaction from immediately reselling large numbers of those shares in the public marketplace.

Rule 144's trading restrictions apply to shares obtained in a private transaction from either the issuing corporation itself or from a person who is deemed an "affiliate" of the issuing corporation. The Rule defines an "affiliate" as a "person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with," the issuing corporation.<sup>788</sup> A corporation's officers, directors, and shareholders possessing at least ten percent of the corporation's outstanding shares are deemed to be "affiliates."<sup>789</sup> There is little SEC guidance or case law on when trusts and corporations qualify as affiliates, such as an offshore trust or shell corporation directed by a company officer, director, or major shareholder. Moreover, the SEC told the Subcommittee that if a person were to ask the SEC for advice on whether a particular entity qualified as an affiliate under Rule 144, the SEC would likely decline to respond as a matter of policy, due to the fact-specific nature of the analysis.<sup>790</sup>

Public corporations, when they issue non-registered shares, typically print a "legend" on each share certificate stating that the shares may not be resold in the marketplace until the shares are registered with the SEC or qualify for an exemption from the registration requirements.<sup>791</sup> The shareholder must get this legend removed before the issuing corporation will allow the shares to be resold. Typically, the shareholder will provide the issuing corporation with a written legal opinion explaining why the legend may be removed and, if applicable, pledging to sell the shares in compliance with Rule 144. The corporation will then inform its transfer agent that the legend can be removed. Once the share certificate is issued without the legend, the

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trading pursuant to a national market plan for the previous four weeks. 17 C.F.R. § 230.144(d) and (e). Non-affiliates of the issuer have a special rule which allows them to hold restricted shares for a period of two years and then to sell them without regard to any volume restrictions. 17 C.F.R. § 230.144(k). This two-year rule is not available, however, to corporate affiliates who are still subject to volume restrictions.

<sup>788</sup> 17 C.F.R. § 230.144(a)(1).

<sup>789</sup> 17 C.F.R. § 230.144(a)(1) - (2).

<sup>790</sup> SEC briefing on Rule 144 (3/2/06); see also SEC Release, 1980 SEC Lexis 443.

<sup>791</sup> SEC regulations do not require these legends, and the SEC does not enforce their use or regulate when they are removed. See, e.g., SEC Release, 1980 SEC Lexis 443, item (4). The legends instead represent "best practice" in the securities field to ensure compliance with Rule 16.

shareholder can sell the shares pursuant to Rule 144 or other ways permitted under the securities laws.

**Trading Restrictions on Corporate Insiders.** Section 16 of the Securities and Exchange Act of 1934 imposes a special set of rules on corporate insiders, meaning a publicly traded corporation's officers, directors, and any person who is directly or indirectly the "beneficial owner" of more than 10 percent of the company's securities.<sup>792</sup> The purpose of Section 16 is to prevent corporate insiders from using nonpublic information to profit from trading in their company's securities.<sup>793</sup> Section 16(a) requires corporate insiders to file periodic reports disclosing their securities holdings and any trades in these securities, while Section 16(b) requires insiders to disgorge any profits resulting from "short-swing trading," meaning trades that buy and then sell the company's securities (or vice versa) within a six-month period.

Section 16 applies to securities which are "beneficially owned" by an insider. Section 16 uses essentially the same definition for beneficial ownership as Section 13D, covering "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares a direct or indirect pecuniary interest in the equity securities."<sup>794</sup> In the case of a trust, a trust beneficiary who is a corporate insider must report the trust's trades involving the company's securities, if the trust beneficiary shares "investment control" with the trustee over the securities.<sup>795</sup> The SEC has also held that where an issuer's securities are held by a separate corporation acting as an investment vehicle for an issuer's insider, the insider must report any transactions by the investment vehicle involving the issuer's securities.<sup>796</sup>

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<sup>792</sup> Section 16 is codified at 15 U.S.C. § 78p; the implementing regulation is Rule 16, codified at 17 C.F.R. § 240.16a-1 et seq.

<sup>793</sup> Section 16(b). If an insider engages in short-swing trading, the company, or a shareholder on its behalf, can bring a lawsuit under Section 16(b) to recover the insider's profits. The SEC, in contrast, has no power to enforce the liability imposed by Section 16(b). Once a person qualifies as an insider, the short-swing liability applies to all equity securities of the issuer traded by the insider, whether or not the security is registered. In addition, insiders are liable for their profits regardless of the insiders' intent.

<sup>794</sup> Rule 16a-1(a)(1) and (2), 17 C.F.R. § 240.16a-1(a)(1) and (2).

<sup>795</sup> Rule 16a-8(b)(3), 17 C.F.R. § 240.16a-8(b)(3).

<sup>796</sup> Opinion of the SEC General Counsel, SEC Release No. 34-1965 (1938)(discussing Rule 144 obligations for a corporation that "merely provides a medium through which [the shareholder] invest[s], or trade[s] in securities"). See also SEC Rule 14a-8, 17 C.F.R. § 240.14a-8, which creates a safe harbor for certain corporations that hold an issuer's shares.

Stock options qualify as securities covered by Rule 16.<sup>797</sup> With respect to stock options, the key event for purposes of applying the short-swing rule is when the stock options were first acquired or granted, rather than when they were exercised, since the exercise date is viewed as a mere change from indirect to direct ownership of the security.<sup>798</sup> Under a rule change in 1996, transfer of a compensatory stock option from a corporation to a corporate insider does not trigger Section 16.<sup>799</sup>

To enforce Section 16, corporate insiders are required to file with the SEC certain forms reporting their ownership and trades of the company's securities. An "Initial Statement of Beneficial Ownership," Form 3, must be filed by all insiders within ten days of becoming a reporting person. Until 2002, a "Statement of Changes in Beneficial Ownership," Form 4, had to be filed within ten days after the end of each calendar month in which an ownership change took place. A 2002 change in the law shortened that period to two business days after the ownership change has taken place.<sup>800</sup> Finally, an "Annual Statement of Beneficial Ownership," Form 5, must be filed within 45 days of the end of the fiscal year to disclose any transaction not previously reported.

Filing these forms is the responsibility of each corporate insider subject to Section 16, but many publicly traded corporations provide their insiders with assistance in preparing and filing the forms.<sup>801</sup> In addition, most corporations rely on these forms when preparing their own SEC filings identifying the stock holdings of their officers, directors, and major shareholders.

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<sup>797</sup> Rule 16a-1(c); 17 C.F.R. § 240.16a-1(c).

<sup>798</sup> SEC Release No. 34-23369 (1991).

<sup>799</sup> 17 C.F.R. 1.16b-3. This rule change was proposed in 1994, modified in 1995, and finalized in 1996. SEC Release No. 34-34514 (8/10/94), 59 F.R. 42449; SEC Release No. 34-36356 (10/11/95), 60 F.R. 53832; SEC Release No. 34-37260 (5/31/96), 61 F.R. 30376. Elimination of the requirement that options be non-transferable in order to be exempt from Rule 16's requirements was part of an over-all relaxation of the option rules. In announcing these changes, the SEC said its reason was that compensation transactions between the corporation and its officers and directors did not involve the kind of market risks that Section 16(b) was intended to discourage.

<sup>800</sup> See Section 403 of the Sarbanes-Oxley Act of 2002.

<sup>801</sup> See, e.g., memoranda which Michaels Stores circulated to its insiders explaining their Section 16 obligations and offering assistance with preparing and filing the forms. 10/4/96 memorandum from Michaels Stores general counsel Mark Beasley to "Executive Officers and Directors of Michaels Stores, Inc." on "Reporting Obligations and Liabilities Under Section 16" (MSNY003551-53)(including handwritten notations from Charles Wyly showing he had read the memorandum); 5/11/05 memorandum from Michaels Stores legal counsel Gabe Vazquez on "General Guidelines Regarding Transactions in Michaels Stock" (B00019921-37).

**Prohibition on Insider Trading.** Finally, Section 10(b) of the Securities Exchange Act of 1934 makes it unlawful to “use or employ in connection with the purchase or sale of any securities ... any manipulative or deceptive device.” 15 U.S.C. § 78j(b). Rule 10b-5, which the SEC adopted over 50 years ago, has been interpreted to prohibit anyone with “material nonpublic information” from engaging in any purchase or sale of any security “on the basis of” that information.<sup>802</sup> Any purchase or sale of a security by a person in possession of such information is presumed to be “on the basis of” the nonpublic knowledge unless the buying or selling process was begun before the buyer or seller obtained the knowledge.<sup>803</sup> This prohibition protects investors by preventing those in possession of inside information from using “any manipulative or deceptive device” to avoid SEC regulations.<sup>804</sup>

Each of these U.S. securities provisions is intended to promote market fairness and transparency and to prevent unfair trading by corporate insiders and affiliates. They impose complex requirements that depend on varying definitions of beneficial ownership and affiliates. Compliance depends in part on SEC regulated brokers and dealers and on securities lawyers with expertise in U.S. law. In this case history, it appears that these professionals may have helped the Wyly-related offshore entities to circumvent or defeat U.S. disclosure obligations, trading restrictions, and insider controls.

## **(ii) Disclosure of Offshore Stock Holdings**

When the Wyly-related offshore entities obtained large numbers of stock options and warrants in Sterling Software and Michaels Stores, they became major shareholders in those publicly traded corporations. At times, the offshore entities owned as much as 18 percent of Sterling Software and 23 percent of Michaels, ownership percentages well in excess of the five percent reporting threshold in U.S. securities law. On a few occasions, the trustees of the offshore trusts filed Schedule 13Ds disclosing the trusts’ stock holdings, but in most years, they did not. In addition, the evidence indicates that, beginning in 1995, the offshore entities began to deliberately structure their securities holdings in ways intended to circumvent SEC reporting obligations for large shareholders.

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<sup>802</sup> See Rule 10b5-1(a).

<sup>803</sup> See Rule 10b5-1(b)-(c).

<sup>804</sup> Securities Exchange Act, § 10(b).

Other persons who were aware of the offshore stock holdings and the close relationship between the offshore entities and the Wyls also failed to disclose. From 1992 until 2004, Sam and Charles Wyls did not include the offshore stock holdings in their Schedule 13D filings, despite their directing the offshore transactions and coordinating onshore and offshore stock transactions. In 2005, in a sudden reversal, both men filed an amended Schedule 13D disclosing the offshore holdings. In this filing, the Wyls did not admit they had any legal obligation to disclose the offshore stock holdings, but said they were taking the action in the event that the SEC were to determine they beneficially owned the securities.<sup>805</sup> Mr. Schaufele, the broker who handled the offshore securities transactions and knew the Wyls were exercising direction over them, apparently never advised the brokerage firms where he worked of possible 13D filing issues. Michaels, Sterling Software, and Sterling Commerce had an obligation to file accurate information with the SEC, including with respect to the stock holdings of their directors and major shareholders, but generally failed to disclose the Wyls-related offshore stock holdings. As a result, until 2005, U.S. securities regulators and the investing public were unaware of the extent of the Wyls-related offshore stock holdings and trading activity.

**Initial Disclosure of Offshore Stock Ownership.** When the offshore entities first received securities from the Wyls, they disclosed their stock holdings in filings with the SEC. In April 1992, for example, Sam and Charles Wyls transferred nearly three million stock options and warrants to purchase Sterling Software and Michaels stock to ten offshore corporations. These corporations were wholly owned by the Bulldog and Pitkin Trusts. That same month, Lorne House, then trustee of the Bulldog and Pitkin Trusts, filed two Schedule 13Ds with the SEC. The first reported that Lorne House, as trustee of the Bulldog and Pitkin Trusts, beneficially owned stock options and warrants to buy about 1.9 million shares, or 18.1 percent, of Sterling Software.<sup>806</sup> The second reported that it beneficially owned stock options and warrants to buy

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<sup>805</sup> Another issue not addressed in the amended filing is whether the Wyls had any obligation to disclose the offshore stock holding in their 13D filings because they were acting as a group with the offshore entities. In other words, even if the Wyls were deemed not to beneficially own the shares belonging to the offshore entities, if the Wyls acted in concert with the offshore entities to buy or sell Michaels securities, and the group together owned more than five percent of Michaels' total shares, then shares owned by the offshore entities would likely have had to be reported on a 13D filing.

<sup>806</sup> See cover letter and Schedule 13D (PSI00138513-23). This Schedule disclosed that Bulldog Trust had acquired "indirect beneficial ownership" of about 1.3 million options and warrants, and the Pitkin Trust had done the same for about 670,000 options and warrants.

960,000 shares, or 5.8 percent, of Michaels Stores.<sup>807</sup> Both of these filings indicated that they were prepared by Michael French of the Jackson & Walker law firm which was then advising Lorne House on its SEC filing obligations.<sup>808</sup>

Two months later, Lorne House filed an amended Schedule 13D with respect to Michaels, reporting that it had sold over 300,000 of its shares and subsequently owned less than 5 percent of the total outstanding shares, which meant that it was no longer obligated to file. It did not file another Schedule 13D with respect to Michaels securities. Lorne House's Schedule 13D for Sterling Software, on the other hand, remained in place and unchanged during 1993 and 1994, continuing to reflect ownership of 18 percent of the company.

**1995 Plan to Circumvent SEC Disclosure.** In 1995, a specific plan was devised to eliminate Lorne House's SEC disclosure obligation by transferring a number of its Sterling Software shares to a new offshore trust with a different trustee. SEC Rule 13d-3 states explicitly that a beneficial owner cannot evade its 13D reporting obligation by creating or using a trust to take ownership of the relevant securities, but that appears to be exactly what happened.<sup>809</sup>

The plan was for the Bulldog Trust to transfer two of its offshore subsidiaries, East Carroll and East Baton Rouge, each of which owned a significant number of Sterling Software shares, to a newly created Isle of Man trust, called the Plaquemines Trust. The grantor of the new Plaquemines Trust was, in fact, the Bulldog Trust itself.<sup>810</sup> On March 6, 1995, a Lorne House employee wrote to Mr. French about the plan as follows:

“Thank you for your fax dated March 3<sup>rd</sup>. We intend to transfer East Carroll Limited and East Baton Rouge Limited from Bulldog to Plaquemines, this would mean that

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<sup>807</sup> See Schedule 13D (PSI00127004-09). The Schedule disclosed that the Bulldog Trust had “acquired indirect beneficial ownership” of about 635,000 options and warrants, while the Pitkin Trust had acquired indirect beneficial ownership of 325,000 options and warrants.

<sup>808</sup> See, e.g., 4/22/92 memorandum from Jackson Walker to Lorne House (PSI-WYBR00271-72)(advising Lorne House on filing Schedule 13Ds and Form 4 under Rule 16).

<sup>809</sup> The Subcommittee asked to see any legal opinion supporting the approach used to end Lorne House's 13D filing obligation; none was produced.

<sup>810</sup> See 2/28/95 Plaquemines Trust Agreement (PSI00064668-99).



Plaquemines would hold 350,000 shares and Bulldog would hold 644,725 shares of Sterling Software.”<sup>811</sup>

The Lorne House managing director, Ronald Buchanan, sent Mr. French another fax the next day:

“Bulldog will settle Plaquemines, in the words which you suggested. Since the purpose of the exercise, as I understand it, is to divide the ownership of Sterling Software we need to split ownership of the underlying companies which own SS between the two trusts. That was the purpose of Barbara’s fax of yesterday.”<sup>812</sup>

These two faxes show that Mr. French, in his role as trust protector, was directly involved in the creation of the new trust, suggesting wording for the trust agreement, and obtaining information on how the shares would be split and transferred from Bulldog to Plaquemines to avoid SEC disclosure requirements. Mr. French told the Subcommittee that, although he had no specific recollection of these communications or creating the Plaquemines Trust, he would have been transmitting the decisions of Sam or Charles Wyly to the offshore trustees.<sup>813</sup>

Three days later, on March 10, 1995, Lorne House amended its Schedule 13D for Sterling Software, reporting that it had disposed of some of its shares and retained just 4.6 percent of the outstanding shares, which meant that it was no longer obligated to file. One month later, on April 5, 1995, the Bulldog Trust transferred East Carroll and East Baton Rouge to the Plaquemines Trust.<sup>814</sup> Lorne House did not file another Schedule 13D with respect to Sterling Software.

**Sterling Software Call Options.** Subsequent securities transactions were also structured to circumvent the SEC reporting requirement. Later in 1995, for example, the Wylys decided that the offshore entities should purchase call options to buy an additional

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<sup>811</sup> 3/6/95 fax from Barbara Rhodes of Lorne House to Mr. French (PSI00120860).

<sup>812</sup> 3/7/95 fax from Mr. Buchanan of Lorne House to Mr. French (PSI00120859).

<sup>813</sup> Subcommittee interview of Mr. French (6/30/06). In his 6/30/06 interview, Mr. French told Subcommittee staff that “Shari and I didn’t make independent decisions on these trusts.”

<sup>814</sup> 4/5/95 Resolutions of the Trust Committee of Lorne House Trust Ltd. (PSI00122306-07). The timing of the transfer of the two corporations to the Plaquemines Trusts suggests that Lorne House may have announced the disposal of its Sterling Software shares before the transfer actually occurred.

500,000 shares of Sterling Software. Mr. French told the offshore trustees that this purchase should be made by several trusts with different trustees in order to avoid triggering the five percent threshold for a 13D filing. Mr. French told the Subcommittee that the decision to buy the Sterling Software call options and to split them among different trusts to avoid SEC reporting came from the Wyls.<sup>815</sup>

To carry out this purchase, in July 1995, Mr. French sent a fax to Mr. Buchanan at Lorne House indicating that the trust protectors would be sending him a recommendation to buy the call options and cautioning that the offshore trusts should acquire them in a way that would “avoid SEC reporting”:

“Please dispose of this fax after reading, as there will be ample documentation as needed.

“It is expected that a recommendation will be made to Wychwood that the Plaquemines Trust, and another trust settled with Wychwood by Pitkin, should contact Lehman regarding acquiring call options on SSW [Sterling Software], probably for about two years at the market. ... Wychwood would ... be limited to approximately 600,000 to 700,000 calls, in order to stay under 5% of the outstanding shares and avoid SEC reporting.

“I am also sending a copy of this fax to Shaun Cairns [managing director of Wychwood], with the same request that he read it and then dispose of it. I will be back on this soon, perhaps tonight.”<sup>816</sup>

Two hours later, Mr. French sent a fax to Mr. Cairns:

“I recommend that you immediately contact Lehman Brothers (Lou Schaufele ...) regarding the acquisition of two year call options to purchase Sterling Software at the market. These would be acquired by the Plaquemines Trust and another trust .... As with my other fax, I suggest that you

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<sup>815</sup> Subcommittee interview of Mr. French (6/30/06). The effort to avoid 13D reporting may have been accelerated by a front page newspaper article in March 2005, that criticized certain Michaels and Sterling Software securities transactions that had been disclosed in 13D filings submitted by Sam Wyly and others. See “If These Stocks Soar, the Boss May Regret It,” *New York Times* (3/12/95); 3/13/95 memorandum by Craig Schiffer on “Michaels Stores/Sterling Software Transaction” (MSNY008885-87).

<sup>816</sup> 7/10/95 fax from Mr. French to Mr. Buchanan (PSI00136718).

dispose of this one as there will be adequate subsequent documentation of any transactions.”<sup>817</sup>

Mr. French told the Subcommittee that he had asked the offshore entities to destroy the faxes, because he was worried that he was giving them more specific instructions than were proper for a trust protector.<sup>818</sup>

One month later, on August 16, 1995, Mr. Buchanan sent the following message to Mr. Cairns, Janek K. Basnet, and others about purchasing the call options and structuring the purchase in ways which would avoid triggering SEC reporting requirements. He wrote in part:

“Shari Robertson, who administers the Wyly Brothers’ affairs from Dallas, rang yesterday afternoon BST to say that Mike French – presumably on Sam’s prompting – does not wish to await John Willis’s return to set up [new] ... Trusts or ... a new credit line with which to buy options on Sterling Software. They will, instead, use the existing facilities with Lehman Brothers in Dallas and Wychwood as trustee. ... Wychwood must not be trustee of the two sets of trusts which are buying options simultaneously since the amount involved would trigger a reporting requirement.”<sup>819</sup>

Still another fax, from Ronald Buchanan to his brother A.J. Buchanan, also referenced the desire to buy the call options without triggering SEC reporting:

“Sam and Charles wish to arrange a bank borrowing to finance the purchase of a large number of call options on Sterling Software shares. I would be grateful if you could find a bank in London which would be interested. ... The pattern will be exactly the same as for the exercise which we recently completed with Lehmann [sic] Brothers in Dallas. The new purchase will be in the name of two new trusts which we are establishing and which will have separate trustees. The Wyllys, who are officers of and shareholders in SS, have been advised that, in consequence, there is no reporting requirement under SEC regulations, such as there

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<sup>817</sup> 7/10/95 fax from Mr. French to Mr. Cairns (PSI00136721).

<sup>818</sup> Subcommittee interview of Mr. French (6/30/06).

<sup>819</sup> 8/16/95 message, presumably a fax, from Mr. Buchanan to AJB, JKB, Shaun Cairns, RJC, FKVC, DJ, JEP, BAR (PSI00118019). The urgency described in this fax may have been related to plans to establish Sterling Commerce as a separate company by the end of the year.

would have been had all their potential interests been aggregated.”<sup>820</sup>

Each of these communications indicates that Sam and Charles Wyly and their representatives were directing the offshore entities to buy the call options, and that the offshore trustees were ready, willing, and did take direction from them. These communications also show that the offshore trusts were willing to and did act in concert to arrange their stock holdings to circumvent SEC disclosure requirements for large shareholders in U.S. public companies.

During 1995, the Bulldog, Pitkin, Bessie, Tyler, Plaquemines, and Delhi International Trusts appear to have collectively owned nearly 3 million Sterling Software securities, including the 500,000 call options.<sup>821</sup> Other than Lorne House, however, the trustees of the offshore trusts owning Sterling Software securities – IFG, Wychwood, and Janek K. Basnet – did not report the holdings in a Schedule 13D filing even though, as a group, each took direction from the Wyls and their representatives, coordinated their securities purchases, and together owned substantially more than the five percent reporting threshold.

**Continued Nondisclosure, 1996-2000.** Over the next five years, the offshore entities obtained additional stock options and shares in Michaels, Sterling Software, and Sterling Commerce, but continued their practice of not disclosing their holdings to the SEC. In early 1996, for example, Sam and Charles Wyly moved another mass of stock options offshore, including 8.6 million Michaels and Sterling Software stock options and 4.6 million Sterling Commerce stock options. The ten corporations that received these stock options were wholly owned by a variety of Wyly-related offshore trusts, including the Bulldog, Pitkin, Bessie, Tyler, Lake Providence International, LaFourche, and Red Mountain Trusts.

In March 1996, three Wyly-related offshore corporations purchased 2 million Michaels shares in private transactions intended to provide \$25 million in additional capital to the company.<sup>822</sup> These purchases were publicly disclosed at the time, and the offshore corporations described as “entities owned by independent trusts of which

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<sup>820</sup> Undated fax from R. Buchanan to A.J. Buchanan (PSI00117994).

<sup>821</sup> See, e.g., chart entitled, “Foreign Systems Priced @ 8/31/95,” (PSI\_ED00042175)(listing Sterling securities owned by the Wyly-related offshore entities).

<sup>822</sup> On 3/29/96, Audubon Assets (then called Fugue) purchased 433,333, Locke purchased 900,000, and Quayle purchased 666,667 shares. See Michaels 1996 10-K filing, Exhibits 4.7, 4.8, 4.9, and 13.

family members of Sam Wyly and Charles J. Wyly, Jr. are beneficiaries.”<sup>823</sup> The trusts were characterized as “independent” despite the direction being exercised by the Wyls over the trusts’ investment activities. In December 1996, two more Wyly-related offshore corporations bought another 2 million Michaels shares in private transactions that provided another \$21 million in new capital to the company. These purchases were, again, publicly disclosed at the time.<sup>824</sup>

As a result of the stock option-annuity swaps and private stock sales, the Wyls have since disclosed that, by November 1996, the Wyly-related offshore entities collectively held over 3.3 million Michaels shares or about 14.2 percent of the total outstanding shares and, one month later, collectively held 5.4 million shares or nearly 23 percent.<sup>825</sup> In December 1997, according to the Wyls’ amended 13D filing, the offshore entities collectively held over 3.5 million shares or 12 percent. But those totals were not disclosed to the investing public at the time. Instead, in January 1997, only one trustee, Trident, filed a Schedule 13D, reporting 2.4 million Michaels options and warrants or 9.5 percent of the total shares.<sup>826</sup> At the end of 1997, Trident filed an amended Schedule 13D reporting only 1.3 million shares and options, or 4.6 percent of the total, which meant that it was no longer obligated to file. No other Wyly-related offshore entity filed a Schedule 13D related to Michaels during 1996 or any subsequent year, until the Wyls’ amended filing in 2005. During this nine-year period, the stock holdings of these major shareholders of this publicly traded company remained hidden from the investing public.

The same was true for Sterling Software and Sterling Commerce. From 1996 until the companies were sold in 2000, none of the Wyly-related offshore entities filed a Schedule 13D disclosing their stock holdings, even though from the 1995 call options, 1996 stock option-

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<sup>823</sup> *Id.* at 170. Audubon Assets was owned by the Bessie Trust associated with Sam Wyly, Locke was then owned by the Plaquemines Trust associated with Sam Wyly, and Quayle was then owned by the Pitkin II Trust associated with Charles Wyly.

<sup>824</sup> On 12/23/96, for \$1 million, Devotion and Elegance purchased options from Michaels to buy two million shares. On 2/28/97, both corporations exercised their options and, for another \$20 million, actually purchased the underlying shares. See 1/2/97 Schedule 13D and 5/2/97 10-K (disclosing that, as a result of these transactions, Devotion held 1,333,333 and Elegance held 666,667 options to buy Michaels shares as a result of the two 12/23/96 option agreements, and that in October 1996, Audubon Assets (then called Fugue) transferred another 433,333 Michaels shares to Devotion “in a private sale for cash”). Devotion was owned by the LaFourche Trust associated with Sam Wyly; Elegance was owned by the Red Mountain Trust associated with Charles Wyly. Both then had Trident as their offshore trustee.

<sup>825</sup> See 4/7/05 Schedule 13D filed by the Wyls with respect to Michaels Stores.

<sup>826</sup> See 1/2/97 Schedule 13D filed by Trident with respect to Michaels Stores.

annuity swaps, and other securities transactions, they collectively owned millions of shares of both companies.<sup>827</sup> Again, the stock holdings of these major shareholders remained hidden from the investing public.<sup>828</sup>

**Failure to Disclose.** From 1992 until 2005, neither Sam nor Charles Wyly included in their Michaels, Sterling Software, or Sterling Commerce 13D filings any of the securities held by the Wyly-related offshore entities, even though the Wyls and their representatives were directing the investment of those securities.

In April 2005, in a dramatic turnaround, the Wyls filed an amended Schedule 13D for Michaels disclosing the offshore holdings, not only for 2005, but since 1992, in the event that Sam or Charles Wyly were “deemed to beneficially own” the shares held by the offshore entities.<sup>829</sup> The 2005 filing disclosed, for example, that had the offshore securities been included in the Schedules that the Wyls originally filed for Michaels Stores in 1992, the Wyly Group would have reported beneficial ownership of an additional 960,000 shares in April and an additional 190,000 shares in September.<sup>830</sup> The amended filing disclosed that, as of the end of 1996, the shares held by the offshore entities had grown to 5.4 million shares or nearly 23 percent of the company. After that, the offshore entities began selling their Michaels stock. In 2005, the amended filing shows that, without including the offshore securities, the Wyly Group collectively owned about 6 million shares or 4.3 percent of Michaels, an amount which is below the reporting threshold. With the offshore securities, the amended filing states that the Wyly Group collectively owned about 10.8 million shares or 7.9 percent, an amount requiring disclosure.<sup>831</sup>

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<sup>827</sup> See, e.g., chart entitled, “Foreign Systems Priced @ 8/31/95,” (PSI\_ED00042175)(showing Wyly-related offshore entities then collectively owned nearly 3 million Sterling Software shares); chart entitled, “Foreign Systems Priced @ 10/31/99” (PSI00109904,12)(showing Wyly-related offshore entities then collectively owned about 2.7 million Sterling Software shares and options and 4.3 million Sterling Commerce options).

<sup>828</sup> In addition, none of the offshore entities filed a Schedule 13D with respect to Scottish Annuity & Life Holdings Inc. after it went public, even though at least one document suggests that the offshore entities collectively owned more than five percent of its outstanding shares. See undated chart, likely after the year 2000, entitled “Offshore Stock Analysis” (PSI00071735)(showing Bulldog, Bessie, and Tyler Trusts then collectively owned about 1 million shares and 1.6 million warrants, or more than 16 percent of the company’s outstanding securities).

<sup>829</sup> See 4/7/05 Schedule 13D filed by Sam and Charles Wyly with respect to Michaels.

<sup>830</sup> See *id.*, referring to Wyly Schedule 13Ds originally filed on 4/23/92 and 10/6/92. The term “Wyly Group” refers to Sam and Charles Wyly and Maverick Entrepreneurs Fund Ltd., whose combined holdings are reported in the 13D filings.

<sup>831</sup> See 4/7/05 Schedule 13D.

The Subcommittee was told that the Wyllys filed the amended Schedule 13D, because they had received new legal advice on their filing obligations. The Subcommittee was told that prior legal counsel had advised the Wyllys that they did not have to include the offshore securities in their 13D filings, but, in 2005, new counsel advised the opposite. The Subcommittee was told that the Wyllys' counsel was still reviewing whether the law would deem them to be beneficial owners of the securities held by the offshore entities, which is why their 13D filings continue to express uncertainty on the issue.<sup>832</sup> Apparently counsel is also uncertain as to whether the Wyllys had an obligation to include the offshore holdings in a group filing. The Subcommittee was told that the Wyllys are awaiting an SEC determination on these matters.

The Wyllys have not taken similar action to amend past 13D filings with respect to Sterling Software or Sterling Commerce, now owned by CA and SBC, respectively. The SEC has advised the Subcommittee that, as a general rule, while an amended 13D filing does not cure a prior failure to disclose, such amended filings represent the best way to handle past non-disclosures and should be filed.

To execute their securities transactions, the Wylly-related offshore entities used the services of their broker, Mr. Schaufele, and his employers, CSFB, Lehman Brothers, and Bank of America. Mr. Schaufele knew that the Wyllys were directing the offshore securities transactions, and that the Wyllys and offshore entities were coordinating their stock buys and other securities transactions, but he apparently never advised his employers of this fact or raised any SEC compliance issue with them.<sup>833</sup>

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<sup>832</sup> See 10/17/05 and 1/17/06 Schedules 13D for Michaels Stores. A related question is whether, under Schedule 13D rules for groups acting in concert, Sam and Charles Wylly should have filed as a group with the offshore entities, whether or not they beneficially owned the offshore securities. See, e.g., documents indicating that the offshore entities were coordinating their securities transactions with those of the Wyllys, above.

<sup>833</sup> In contrast, when the clearing broker for Bank of America reviewed the securities transactions being conducted by the offshore entities, he wrote the following:

"If all of the accounts were funded by the same 'grantor', then they are all related in that aspect. ... Who are the beneficial owners of all the grantor trusts? ... My concern is that I do not believe that this company is reporting the ownership of the shares adequately. The fact that they are all being treated as separate companies does not impact the matter because they clearly have a link due to the original deposit. In addition, some of the accounts also maintain a control relationship even as independent accounts. Therefore, an account like ... [Quayle Ltd.] which made a sale of 100,000 shares of Michael's on 09/02/03 should have filed a form 144 with the SEC because of their control relationship before the sale. Do we have a copy of that form on file? This is an important issue that I do not believe can be explained in a paragraph and without documentation. I know that this issue will take a lot of time to resolve, but I do not believe that we

The three corporations whose securities were the subject of most of the trades, Michaels, Sterling Software, and Sterling Commerce, had an obligation to file accurate information with the SEC, including with respect to the stock holdings of their directors and major shareholders. All three companies were aware of the close relationship between the Wylys and the offshore entities, and all three knew of the massive transfers of stock options offshore. Yet, except on rare occasion, these three corporations did not include the offshore stock holdings in their SEC filings, either as separate items or in consolidation with the Wyly holdings. As a result, each failed to inform the investing public that the company's directors and major shareholders had transferred a substantial portion of their stock holdings to offshore entities that were continuing to trade in those securities.

### **(iii) Restrictions on Private Stock Sales**

A second securities issue raised in this case history involves non-registered securities that were transferred to the offshore entities in private transactions and then sold by them into the public stock markets, apparently at times without complying with the trading restrictions established to protect the investing public. The key issue is whether the offshore corporations should have been treated as "affiliates" of the publicly traded corporations whose securities they obtained from the Wyly stock options and warrants. If so, their shares should have been sold subject to the timing and volume restrictions established under Rule 144 for corporate affiliates. For many years, the offshore corporations were not treated as affiliates by financial institutions such as Lehman Brothers. In 2001, Lehman lawyers tentatively concluded that one of the offshore entities should be treated as an affiliate subject to the trading restrictions. Mr. Schaufele subsequently left the firm, took a position with Bank of America, taking the offshore corporation accounts with him, and continued to treat the offshore entities as nonaffiliates.

**The Affiliate Issue.** Under Rule 144, when Sam and Charles Wyly transferred Sterling Software and Michaels stock options to the offshore entities, both men qualified as "affiliates" of those companies due to their status as directors and large shareholders. Shares sold by an affiliate in a private transaction become "restricted shares" that cannot be freely resold on a U.S. stock exchange unless they are registered with the SEC or meet the requirements for a registration exemption.

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understand their business, and I want to make sure they are in compliance with SEC regulations."

2/18/04 email from Zachary Pinard of Fidelity Investments to Margo Hursh of Bank of America (BA008317).



Restricted shares can be resold to the public under Rule 144, but only if the shareholder complies with certain timing and volume restrictions. Another key factor is whether the person obtaining the shares also qualifies as an affiliate of the issuing corporation, and is therefore subject to the same trading restrictions.

Here, the Wyly-related offshore entities took the position that they were not corporate affiliates for purposes of Rule 144.<sup>834</sup> Documents show that Mr. Schaufele steadfastly maintained that position within the securities firms that employed him. For example, in 1999, when Lehman Brothers was conducting securities transactions involving Sterling Software shares held by three offshore corporations, in response to a question by a colleague, Mr. Schaufele wrote: “for the 100th time the client never was an affiliate nor had to file when sold, stock is clean.”<sup>835</sup>

By taking this position, the offshore entities not only avoided having to comply with Rule 144’s timing and volume restrictions, but also claimed that their shares did not have to be aggregated with those of Sam or Charles Wyly who, as company directors, were already subject to the trading restrictions.<sup>836</sup> They were also able to pledge the shares as collateral in certain securities transactions that permitted only unrestricted shares. In addition, in some instances, the offshore entities asserted that they had met the two-year holding period specified in Rule 144(k), which is available only to nonaffiliates, and so were free to sell specified shares without the trading restrictions put in place to protect the investing public.<sup>837</sup>

Rule 144 defines an “affiliate” as a “person that directly, or indirectly through one or more intermediaries, controls, or is controlled

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<sup>834</sup> The offshore service providers serving as trustees of the Wyly-related offshore trusts and as directors and officers of the offshore corporations refused to provide interviews to the Subcommittee, so this analysis is based solely on a review of the documents obtained by the Subcommittee related to these matters.

<sup>835</sup> 1/26/99 email from Mr. Schaufele to a Lehman colleague, Michael C. Cohen, regarding Sterling shares held by Samia, Greenbriar, and Quayle (CC041983).

<sup>836</sup> See, e.g., 4/27/92 fax from Ms. Robertson to Russell Collister of Lorne House, with copy to Mr. French (PSI00126713), discussed below. See also Rule 144(e)(3)(iv) and (vi); 17 C.F.R. § 240.144e-3.

<sup>837</sup> See, e.g., 6/30/00 letter from Lehman Brothers to Michaels Stores with attachment (MSNY025479-80)(stating Devotion could sell 750,000 restricted Michaels shares because they had “been beneficially owned ... for a period of at least two years”); similar letters dated 6/30/00 (MSNY025474-76)(involving 466,667 Michaels shares owned by Elegance), and 7/20/00 (MSNY006415-16)(involving 150,000 Michaels shares owned by East Baton Rouge).

by, or is under common control with,” the issuing corporation.<sup>838</sup> The key regulation defines “control” as “possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person whether through the ownership of voting securities, by contract, or otherwise.”<sup>839</sup> The broader question raised by the Wyly-related offshore entities is when an offshore trust or shell corporation under the direction of a company officer, director, or major shareholder also qualifies as an affiliate.

**Affiliate Issue First Arose in 1992.** In this case history, the affiliate issue arose as early as April 1992, when a Lorne House employee apparently asked whether the Sterling Software and Michaels shares held by the offshore entities were subject to Rule 144 trading restrictions. Ms. Robertson, then head of the Wyly family office and a trust protector, responded as follows:

“I had a short discussion with Ronnie [Buchanan] yesterday regarding your transmittal of April 24. I wanted to make sure you were clear on the reporting/volume selling requirements of these securities. The securities owned by Little Woody Limited (166,500 options), Roaring Fork Limited (166,500 options) and East Carroll Limited (667,000 options) will be registered securities of Sterling Software when exercised. Michael French’s firm [Jackson & Walker] can provide Lorne House and the banks with which you are having discussions, a legal opinion stating that these securities are not subject to any Securities and Exchange Commission Form 144 volume Rules and that the Securities in no way need to be aggregated with the Settlers of the Trusts – Charles and Sam Wyly....

“I gather the banks are showing concern that the eventual beneficiaries - the children of Charles Wyly and Sam Wyly are shareholders .... Again, these shares would not be aggregated for volume rule selling purposes with the other shares owned by the children. The only requirement for reporting to the [SEC] is to file Form 13D which just states that Lorne House beneficially controls or votes more than 5% of the outstanding stock of Sterling software.”<sup>840</sup>

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<sup>838</sup> 17 C.F.R. § 230.144(a)(1).

<sup>839</sup> 17 C.F.R. § 230.405. See also SEC v. Kern, 425 F.3d 143 (2<sup>nd</sup> Cir. 2005)(finding that individuals controlled several corporations even though they did not own the corporate shares).

<sup>840</sup> 4/27/92 fax from Ms. Robertson to Mr. Collister of Lorne House, with copy to Mr. French (PS100126713).

The Subcommittee requested a copy of any Jackson & Walker opinion provided to Lorne House, as referenced in this communication, but it was not produced. Mr. French told the Subcommittee that Jackson & Walker did not issue such an opinion.<sup>841</sup> The Subcommittee did obtain copies of other Jackson & Walker letters opining that the restrictive legends on shares obtained by the offshore trusts could be removed. These letters either cited the two-year holding period that is available only to nonaffiliates, or presented the conclusion that the legends could be removed without providing a supporting explanation.<sup>842</sup> Legends were, in fact, routinely removed from the share certificates presented by the offshore entities.

During the thirteen year period examined in this Report, the Wyly-related offshore entities sold hundreds of thousands of Michaels and Sterling Software shares without following the trading restrictions established to protect the investing public from shares acquired in private transactions. CSFB, Lehman Brothers, and Bank of America also engaged in many securities transactions with the offshore entities, including margin loans, stock collars, call options, and equity swaps, and, with the exception explained below, treated the offshore entities as if they were nonaffiliates. If they had been treated as affiliates, with shares subject to trading restrictions, their shares may not have qualified as acceptable collateral for some of the loans and other securities transactions that, in fact, took place.

**Affiliate Status Questioned.** In 2001, Lehman Brothers legal counsel began to question the affiliate status of one of the Wyly-related offshore entities. In September 2001, after Sam Wyly had expressed interest in selling a significant number of Michaels shares held domestically, Mr. Schaufele recommended that, instead of selling them, Mr. Wyly consider entering into a derivative securities transaction, such as a collar or prepaid forward sale, in which he could retain ownership of the shares while obtaining a cash payment representing some of their value.<sup>843</sup> Mr. Schaufele presented several alternatives, some of which called for the participation of one of the offshore entities, Devotion,

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<sup>841</sup> Subcommittee interview of Mr. French (6/30/06).

<sup>842</sup> See, e.g., Jackson & Walker letters to the Harris Trust Company of New York on 6/24/97 regarding 245,454 Michaels shares sold by Locke (MSNY025121-22), on 7/11/97 regarding 300,000 Michaels shares sold by Quayle (MSNY008917-18), on 10/27/97 regarding 166,667 Michaels shares sold by Elegance and Devotion (MSNY025087-88), (all of which opine that the legend may be removed from the relevant share certificates, but without providing a specific explanation); letters citing two-year holding period in footnote 322, above.

<sup>843</sup> See, e.g., 9/24/01 email from Ms. Hennington to Mr. Schaufele (CC031044); 9/28/01 email from Mr. Schaufele to Sam and Evan Wyly (CC012973)(discussing possible derivatives securities transaction).

which could buy the shares from a Wyly domestic entity or buy equivalent shares on the open market.<sup>844</sup> Several internal emails, in which Mr. Schaufele discussed the possible transaction with his colleagues, contrasted the domestic entity's affiliate status with Devotion's nonaffiliate status and possible impacts on the Wyls' SEC reporting obligations and insider obligations. For example, Mr. Schaufele wrote:

"I spoke with the family last night, they do understand that we will be collaring 20% more stock than Devotion would be purchasing. ... If Sam sells into the open market he must comply with rules of an Insider on selling versus he can cross it to Devotion. It means not as liquid and perhaps multiple filing. I also understand more why Sam won't do the forward, when we did the original collar on MIKE there was a lot of negative press (front page NY times). what would be the best is if we could effect our hedge into the open market then cross stock to Devotion as we get stock off on the US side or elsewhere (meaning if it could happen in London that is ok)."<sup>845</sup>

On October 4, 2001, Mr. Schaufele suggested that Devotion enter into a three-year prepaid forward contract with Lehman Brothers to sell the Michaels shares, a type of transaction which the offshore entities had not previously done. As part of Lehman's internal review process, the transaction was presented to Lehman's in-house lawyers to get legal clearance for Devotion to participate. In response, the legal department expressed the view that Devotion may qualify as a Michaels "affiliate" due to Devotion's ties to Sam Wyly. The lawyers warned that if Devotion were an affiliate, its restricted shares would not qualify as acceptable collateral for the proposed transaction.

Mr. Schaufele immediately objected to this "legal intervention," described prior occasions on which Lehman Brothers had entered into transactions with the offshore entities without raising the affiliate issue, and urged his superiors to approve going forward with the proposed transaction. In one October 2001 email, he wrote: "I think we are being a little to[o] zealous here. [T]he only reason this happened is us

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<sup>844</sup> See October emails between Mr. Schaufele and Sam Wyly, Ms. Hennington, and others about the proposed transaction. (CC027640-45).

<sup>845</sup> 10/4/01 email from Mr. Schaufele to a Lehman colleague, Michael C. Cohen (CC027645).

explaining to them the transaction. [W]e are over lawyering this.”<sup>846</sup> In another email, he wrote:

“It was on the Sterling Software collar and options that we did derivative trades with the offshore entities (of which Devotion was one). Sam Wyly was a director of Sterling Software, just like he is in Michaels Stores. We have also done numerous trades both buys and sales of these stocks in these entities without this legal intervention. In 1996 we sold over 666,000 shares of SSW and in 1997 we sold over 400,000 shares of Michaels Stores. I do not understand why we cannot proceed given that we have talked with the Michaels Stores outside company counsel and that they do not consider Devotion Ltd. an affiliate. Here we want to purchase stock and enter into a forward sale, I am assuming this is a very profitable trade for the firm and really wonder what is going on here.”<sup>847</sup>

On the same day, one of his colleagues sent an email to other Lehman personnel summarizing the issues as follows:

“Below are the facts to date on the devotion trade.

“Devotion Ltd. wants to enter into a three year Pre-Paid Forward on Michaels Stores. Devotion is an Isle of Man corp. that is owned by a trust whose beneficiary’s are either children or grandchildren of Sam Wyly. The trust is run by independent trustees. Lehman has done multiple trades ... over the years with various similar entities set up by the Wyly’s, (ie...Sarnia, Greenbriar, Quayle, Roaring Fork, Moberly and Devotion).

“As with all trades we do where we are borrowing the client’s shares and desire to have a physical settlement option, we need to be satisfied that the client is not an affiliate of the issuer. The client is willing to represent to us that it is not an affiliate and Michaels Stores counsel, Bob [Estep] of Jones Day, has spoken to Gordon on the issue. Bob told Gordon that Devotion is not considered an affiliate by Michaels Stores. However, he also indicated that he did not necessarily agree with that determination. Gordon rightly

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<sup>846</sup> 10/4/01 email from Mr. Schaufele to Michael C. Cohen (CC027649).

<sup>847</sup> 10/5/01 email from Mr. Schaufele to Michael C. Cohen with a copy to John Wichham (CC027651).

requested more comfort on the issue. It was hoped comfort would come in the form of an opinion.

“This afternoon we spoke with ... Bob [Estep] and a colleague who has a securities background, John McCaferty, and Rodney Owen who is counsel for Devotion. They all reiterated that the client was not an affiliate of MIKE. [Redaction] Since none of these attorney’s have been asked to ever investigate those details, they could not render the opinion we have asked for. ... I do not believe we will get an opinion.”<sup>848</sup>

This email shows that the Jones Day and Meadows Owens law firms, as well as Michaels Stores legal counsel, were willing to tell Lehman Brothers orally, but not in writing, that Devotion was not an affiliate of Michaels Stores. It also indicates that Bob Estep of Jones Day expressed some disagreement with that determination, as did Lehman’s lawyers.

The next day, Mr. Schaufele sent an email to several colleagues alerting them to the issue:

“I just wanted to give you a heads up on a situation: We have an offshore entity Devotion Ltd. (They are [an] offshore corporation that is owned by a trust whose beneficiaries are some members of the Wyly family) who wants to do a forward sale on 600k of Michaels Stores. Sam Wyly is a director/insider at Michaels Stores. Lehman’s counsel is of the opinion that Devotion is therefore an affiliate. Now we have had a conference call with Gordon Kiesling (LB), Russ Hackmann (LB), Michael Cohen (LB), John McCaferty (Michaels Stores outside counsel), Bob [Estep] (Michaels Stores outside counsel), Rodney Owens (tax counsel for Devotion and the Wyly’s) and myself. Basically (this is my read on the situation) the company counsel and Devotion Ltd. counsel said that they are not an affiliate but that getting an opinion would probably be time consuming and expensive. As a little history, we have done derivative trades for this entity and other offshore entities in the past in companies that the Wyly’s control. ... I don’t want to jeopardize the firm but I do believe that we are getting a little ‘over lawyered’ and in not doing this trade I believe would cause some serious problems in Lehman’s relationship. I can tell you

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<sup>848</sup> 10/5/01 email from Michael C. Cohen to David Gittings and others within Lehman Brothers (CC037563)(emphasis and redaction in original as produced to the Subcommittee).

that in my dealings with these entities for the past 5+ years you do not talk offshore business with the family and all dealings/orders come via phone and fax from the offshore directors and to me everything appears in order.”<sup>849</sup>

Although Mr. Schaufele indicated in this email that he did “not talk offshore business” with the Wyly family, this statement is contradicted by many other documents including an email from the previous day in which Mr. Schaufele wrote to a different Lehman colleague: “I spoke with the family last night, they do understand that we will be collaring 20% more stock than Devotion would be purchasing. I talked thru the risk of not doing this simultaneously.”<sup>850</sup>

A few days later, the Wyly family office informed Lehman Brothers that Sam Wyly had decided against going forward with the Devotion transaction.<sup>851</sup> Two weeks after that, a senior Lehman official urged the firm to reconsider and resolve the affiliate issue in favor of the Wyllys:

“I need to get the details on the atty’s opinion as it relates to the offshore entity being an affiliate. It seems like we have done trades in the past without issues. The Wyly groups internal counsel does not consider them an affiliate. This relationship has been exclusive to Lehman in the past. Mr. Wyly is not going to bitch and moan, if we make it to[o] difficult to do business here, without emotion he will take his business across the street. We do not want that!! Lou said it felt like we got over Lawyered on the last enquiry. ... I would like to be proactive and get the issue put to bed so Lou could go back to them next week and tell them that the affiliate issue will no longer be a problem. Getting that done may require us to get Ed or Charlie involved to make a business decision. This is very important to me and to the team, we may have to jerk some chains but we need to get this resolved.”<sup>852</sup>

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<sup>849</sup> 10/5/01 email from Mr. Schaufele to Edward Feigeles, Kurt Haney, and Michele Crittenden (CC018669).

<sup>850</sup> 10/4/01 email from Mr. Schaufele to his colleague Michael C. Cohen (CC031033).

<sup>851</sup> See 10/9/01 email from Ms. Hennington to Mr. Schaufele (CC027680) (“Sam has decided to not go forward with the forward sale or the call spread. He said he was sorry for wasting everyone’s time ...”). This email shows that it was Mr. Wyly rather than Devotion’s officers or directors who made the decision not to enter into the prepaid forward transaction.

<sup>852</sup> 10/26/01 email from Kurt Haney to Michael C. Cohen and others (CC027681).

Mr. Schaufele subsequently left the firm and moved to Bank of America, taking the offshore accounts with him. He had begun employment negotiations in the fall of 2001, and told Bank of America in September that he was willing to make the move.<sup>853</sup> In fact, in early October, while Lehman resistance to the Devotion trade due to affiliate concerns was firming up, Mr. Schaufele suggested that Bank of America price the same transaction:

“[I] may have a trade for you guys. [A] forward sale in MIKE. For kicks you might just price 3yr fwd with 40% upside. [Y]ou can use my stock for borrow, clean and non affiliate. This is for an offshore corporation (Isle of Man). The OC is owned by a trust whom the beneficiaries are Wyly family children/grandchildren. MIKE’s counsel has said that they do not consider it an affiliate, they are not listed in the proxy but our legal eagles want something more which is ridiculous. I still may get it to happen but . . .”<sup>854</sup>

The Private Client Services division of Banc of America Securities (BAS) extended a formal job offer to Mr. Schaufele on January 16, 2002.<sup>855</sup> He accepted and began working to persuade the Wyllys to have the offshore accounts follow him to the new firm. Shortly before starting his new job, Mr. Schaufele sent the following email to Sam and Charles Wyly:

“I would like to thank you for your support. ... In coming to a new organization we do not have the history that we had at Lehman (which is a good thing). Each entity is going to be a totally separate entity without any linkage. While we were at Lehman it evolved to the point that Lehman viewed some of the accounts (off and on) as linked. They went as far as getting the counsel for Michaels on the phone to see if they viewed the offshore accounts as affiliates. Even though the counsel did not view the offshore as affiliates, Lehman chose to treat them as affiliates. Should the offshore accounts come here they would come as independent new entities, which I would work to maintain. Again I just wanted to let you know

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<sup>853</sup> See 9/9/01 email from Mr. Schaufele to Jeff Spears at Bank of America (BA054831-32)(discussing plans to move to the new job).

<sup>854</sup> 10/7/01 email from Mr. Schaufele to Mr. Spears at Bank of America (BA057340).

<sup>855</sup> 1/16/02 letter from Banc of America Securities to Mr. Schaufele (BA055294-97)(extending formal job offer). The Private Client Services division handled securities accounts for wealthy individuals.



that I am very aware of the situation and will work accordingly. Again thanks for your confidence.”<sup>856</sup>

Mr. Schaufele’s employment with BAS officially began on February 19, 2002.<sup>857</sup> By then, the Wyls had consented to the Wyls-related offshore entities moving with him.<sup>858</sup> Later in 2002, Mr. Schaufele arranged for Devotion to enter into a prepaid forward contract, which Banc of America Securities called a Specialized Term Appreciation Retention Sale (STARS), involving 800,000 Michaels shares. Mr. Schaufele assured his new colleagues that Devotion was not a Michaels affiliate and had no restrictions on its stock.<sup>859</sup>

**Analysis.** Section 5 and Rule 144 are intended to prevent issuing corporations and their affiliates from circumventing U.S. securities laws by transferring company shares through nonpublic transactions and then allowing those securities to be immediately resold in public markets. In this case history, Sam and Charles Wyls were affiliates of three publicly traded corporations. While affiliates, they provided millions of stock options and warrants to offshore entities whose investments they directed, using private transactions not open to the investing public. These private transactions included the stock option-annuity swaps, private sales of stock options, and private placements. The facts suggest that this is a situation where Section 5 and Rule 144’s trading restrictions ought to limit the ability of the offshore entities to re-sell their privately acquired shares. Instead, the offshore entities were able to exercise their stock options, immediately sell many of the resulting shares on the open market, and use other shares as collateral for profitable securities transactions, all the while claiming they were not corporate affiliates subject to trading restrictions.

The offshore entities succeeded in selling their privately acquired shares in the public markets in part because of the assistance they received from their broker and the public corporations who issued the

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<sup>856</sup> 2/14/02 email from Mr. Schaufele to Ms. Boucher forwarding his email to Sam and Charles Wyls (BA056311). See also email from Ms. Hennington to Ms. Boucher and Ms. Robertson (PSI\_ED00009278-79).

<sup>857</sup> 2/19/02 email from BAS to Virgil Harris and Mr. Schaufele (BA056293).

<sup>858</sup> 2/19/02 email from Ms. Boucher to Ms. Robertson (PSI\_ED00009279)(“Lou’s move to B of A was final last week. Sam & Charles have consented to moving all their stuff with him. ... Lou is planning on travelling to IOM.”).

<sup>859</sup> See, e.g., 10/7/01 email from Mr. Schaufele to Jeff Spears at BAS (BA057340)(characterizing Devotion’s Michaels shares as “clean and non affiliate” and stating that, “MIKE’s counsel has said that they do not consider it an affiliate, they are not listed in the proxy but [Lehman’s] legal eagles want something more which is ridiculous.”).

shares. Mr. Schaufele knew that the Wyllys and their representatives were directing the securities trades by the offshore entities. He nevertheless insisted that the offshore entities be treated as independent actors and nonaffiliates free of any trading restrictions.

Michaels, Sterling Software, and Sterling Commerce also treated the offshore corporations as nonaffiliates, even though they knew the offshore corporations were associated with the Wyllys. None of the companies ever conducted a factual inquiry into the evidence suggesting the offshore corporations were under the direction of the Wyllys. Michael's outside legal counsel, Jones Day, also failed to conduct a factual inquiry, yet told Lehman that it had concluded Devotion was not an affiliate. The Jones Day lawyer closest to the Wyly-related offshore entities "indicated that he did not necessarily agree with that determination," but he, too, failed to press the issue. Meadows Owens, a law firm that at various times represented both the Wyllys and the offshore entities, also asserted that the offshore entities were not affiliates. None of the lawyers offering this legal conclusion, however, was willing to place this opinion in writing. At one point, Mr. Schaufele explained the lawyers' reluctance to provide a written opinion by saying the necessary fact investigation would be too "time consuming and expensive." After years of treating Devotion as a non-affiliate, Lehman tentatively concluded that Devotion was an affiliate subject to SEC trading restrictions.

By treating the Wyly-related offshore entities as nonaffiliates, the lawyers and public corporations involved in this matter appear to have facilitated the circumvention of U.S. trading restrictions on affiliates and prohibitions on the re-sale of privately acquired shares in the public markets.

#### **(iv) Restrictions on Insider Trading**

A final set of securities issues raised by the Wyly-related offshore entities has to do with what is commonly called insider trading. Under U.S. securities law, Section 16 of the Exchange Act imposes special disclosure obligations and short-swing profit limits on corporate insiders who trade in their companies' stock. Section 10(b) of the Exchange Act, together with Rule 10b-5, prohibit anyone with "material nonpublic information" from engaging in the purchase or sale of any security "on the basis of" that information. Both provisions are intended to prevent persons with inside information from taking unfair advantage of the investing public.

Over the thirteen years examined in this Report, the Wyly-related offshore entities engaged in numerous stock trades involving Michaels, Sterling Software, and Sterling Commerce shares, companies where the Wyllys were directors and major shareholders. Some of these trades appear to have included buys and sells within a six-month period. Others appear to have taken place during periods in which Michaels, Sterling Software, or Sterling Commerce were anticipating engaging in transactions that could affect their stock prices. These trades were conducted by offshore entities whose activities were not reported to the SEC – unlike trades conducted by the Wyllys personally that would have been reported – and so information about these trades was not available at the time to U.S. securities regulators or the investing public.

In April 2005, when Sam and Charles Wyly filed their amended Schedule 13D disclosing the Michaels securities held by the offshore entities, they made “a proposal to settle any issue of potential Section 16 liability” from trades in Michaels stock by the offshore entities that took place within a six-month period.<sup>860</sup> On March 15, 2006, Michaels established a special committee of its Board of Directors “to investigate and make decisions on behalf of Michaels with respect to any potential Section 16 liability issue” in connection with trades by the offshore entities.<sup>861</sup> A draft agreement between the Wyllys and Michaels proposed that the Wyllys disgorge any short-swing profits that might have arisen from these trades.<sup>862</sup> The Michaels special committee is currently in negotiations with the Wyllys to determine the scope of their potential Section 16 liability and reach agreement on the amount of short-swing profits to be disgorged, which the Subcommittee was told could involve millions of dollars.<sup>863</sup> The Subcommittee has been told that no parallel negotiations are underway with CA or SBC regarding possible short-swing trades of Sterling Software, Sterling Commerce, or CA shares by the offshore entities.<sup>864</sup>

Similar concerns apply to securities trades during periods when the Wyllys may have had material nonpublic information about the corporations whose shares were being traded by the offshore entities. Sterling Commerce, for example, was first incorporated in December

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<sup>860</sup> 1/17/06 Michaels 10-K filing with the SEC at 23-24; see also 3/29/06 10-K filing at 23.

<sup>861</sup> *Id.* at 24.

<sup>862</sup> See, e.g., 4/5/05 draft “Settlement Agreement” (MSNY-9000714-17).

<sup>863</sup> Information provided by the Michaels special committee (7/10/06).

<sup>864</sup> Information provided by CA (7/09/06) and SBC (7/13/06).

1995, as a subsidiary of Sterling Software, and made its initial public offering of stock in March 1996. In July 1995, five months before Sterling Commerce was incorporated, Sam and Charles Wyly directed the offshore entities to purchase call options to buy 500,000 Sterling Software shares.<sup>865</sup> Sterling Software was to become the majority shareholder of Sterling Commerce. The call options were purchased by two of the offshore corporations, Devotion and Elegance, in 1995, for about \$5 million. After they purchased the call options, Sterling Software's stock price increased. When they sold the Sterling Software call options in October 1996, a little over a year later, the two offshore corporation apparently made a profit of at least \$2 million.<sup>866</sup> Mr. French told the Subcommittee that when he "recommended" that the offshore trusts buy the call options, he had not known about the plans for Sterling Commerce to be incorporated and go public; he indicated that he did not know whether Sam and Charles Wyly had this information when they directed the purchase of the call options in July.<sup>867</sup>

A second example involves the six months prior to the sale of Sterling Software and Sterling Commerce in March 2000. Sam and Charles Wyly apparently knew in July 1999 that both companies were to be sold.<sup>868</sup> On September 30, 1999, Sam and Charles Wyly transferred about 3.3 million Sterling Software and Commerce stock options to four Wyly-related offshore corporations, East Carroll, Elegance, Greenbriar, and Quayle, in exchange for about \$27.2 million in cash. About a week later, on October 8, 1999, three offshore corporations, Greenbriar, Quayle, and Sarnia Investments, entered into a swap transaction with Lehman Brothers, pursuant to which Lehman began buying Sterling Software shares on the open market to hedge the swap.<sup>869</sup> Five days

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<sup>865</sup> See discussion of "Sterling Software Call Options" in this section, above.

<sup>866</sup> See, e.g., the following documents showing the purchase of the call options for about \$5 million (CC039125, 39; CC038274-76, 394, 396-404, 440, 643, 722-26, 765) and their sale for about \$7.4 million (CC038283, 427, 433, 443-44).

<sup>867</sup> Subcommittee interview of Mr. French (6/30/06). The Wyllys declined the Subcommittee request for an interview, asserting their Fifth and Fourth Amendment rights.

<sup>868</sup> See discussion of these sales, above, including deposition testimony by Sam Wyly indicating that the decision to sell the two companies was made in July.

<sup>869</sup> See draft term sheets for equity swaps, including 10/8/99 "Equity Swap (LONG)" involving Sterling Software stock and Greenbriar (CC022040-41); 10/8/99 "Equity Swap (LONG)" involving Sterling Software stock and Sarnia Investments (CC017344-45); 10/8/99 "Equity Swap (LONG)" involving Sterling Software stock and Quayle (CC029349-50). These swaps had identical terms and were apparently carried out in tandem by Lehman personnel. See also 10/8/99 email from Ms. Boucher to Sam and Evan Wyly and Ms. Robertson on "SSW" (MAV007713) ("Lehmans has started the transaction." Ms. Boucher also forwarded an email from Mr. Schaufele in which he stated: "We have started, we will be crossing the stock purchased by Moberly and Quayle into the swap.").

later, Lehman had purchased over 550,000 Sterling Software shares at a total cost of about \$20 per share or \$11.4 million. On a Lehman document reporting the stock buys, a handwritten note from Evan Wyly to his father Sam Wyly states: "Looks like they're doing a great job buying a big % of the volume without moving the price."<sup>870</sup> Additional securities transactions involving the offshore corporations and Sterling Software securities followed.<sup>871</sup>

The 1995 and 1999 securities transactions raise a number of issues. It appears that, during both periods, the Wyllys may have been in possession of material nonpublic information. During both periods, the offshore entities engaged in securities transactions that would turn a profit if the Sterling Software stock price increased. During both periods, it appears that the existence of these offshore entities, their status as major shareholders of Sterling Software and Sterling Commerce, their close association with the Wyllys, and the timing, nature, and extent of their securities transactions were not reported to U.S. securities regulators or the investing public. If the same trades had been conducted by the Wyllys themselves, the trades would have been reported to the SEC and available to the investing public.

#### **(4) Bringing Offshore Dollars Back with Pass-Through Loans**

After the 1992 and 1996 stock option-annuity swaps moved millions of stock options and warrants offshore, the offshore entities began to exercise the stock options and warrants, sell the shares, and engage in other securities transactions that collectively generated millions of dollars in untaxed investment gains. In 1998, a new shell corporation was established in the Cayman Islands called Security Capital Ltd., which was used to funnel millions of these offshore dollars back into the United States. On ten occasions from 1998 until 2003, various Wyly-related offshore corporations made substantial loans of

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<sup>870</sup> 10/13/99 document entitled, "SSW Swap Execution Report: Sarnia, Greenbriar, Quayle," that appears to have been prepared by Lehman (PSI00109917). See also 10/13/99 email from Evan Wyly to Ms. Boucher (PSI\_ED00069083)("I think Lehman is doing a great job of buying a high % of the trading volume near the VWAP without moving the stock price. ... [I]t would be reasonable to pay a small premium to get a big block of stock.").

<sup>871</sup> See, e.g., 10/18/99 email from Ms. Boucher to Sam, Charles and Evan Wyly and Ms. Robertson on "SSW" (PSI\_ED00043758)(forwarding an email from Mr. Schaufele proposing additional securities transactions; Ms. Boucher asked the Wyllys: "Please advise on how you would like to proceed."); 1/25/00 fax from Lehman Brothers Finance to Greenbriar on "Reset of SSW swap" (CC021686) with additional resets on 3/3/00 (CC021920) and 6/5/00 (CC021692); 3/2/00 "Equity Swap (LONG) Amendment" involving 2 million Sterling Software shares and Greenbriar, Quayle, Moberly, Roaring Fork and Sarnia Investments (CC031181-83); and 3/3/00 "Equity Swap Amendment (SSW)" involving 1.5 million Sterling Software shares and Greenbriar, Moberly, and Sarnia Investments (CC031175-77).

offshore funds or other financial assets to Security Capital Ltd., which loaned the same amount of funds or assets to Wyly-related persons or entities. Over that five year period, Security Capital functioned essentially as a transit point for nearly \$140 million in offshore assets, including \$33 million loaned to Sam Wyly; \$31 million loaned to Charles Wyly; \$56 million in financial assets other than cash loaned to Cayman entities associated with Sam Wyly's children; \$14.5 million loaned to Green Mountain, a Wyly-related U.S. business venture, or one of its executives; and \$5 million loaned to the Wrangler Trust, a U.S. trust established by Sam Wyly.

The Security Capital transactions show that, over a five-year period, the Wyly-related offshore corporations sent millions of untaxed offshore dollars into the United States. These transactions also provide additional evidence of Wyly influence over the Isle of Man offshore corporations, eight of which transferred millions of dollars and other financial assets to a newly-created shell corporation with no assets, employees, or offices, apparently without requiring any collateral as security. Finally, the Security Capital transactions show that Sam and Charles Wyly utilized the untaxed capital gains produced by the offshore entities to advance their personal and business interests in the United States. By using the offshore dollars and assets supplied by the Wyly-related corporations, Security Capital was able to issue corresponding loans to Wyly-related persons and entities. These loans offered generous terms that, for example, allowed Sam Wyly to use \$10 million and Charles Wyly to use \$25 million for 15 years before any principal had to be repaid. Security Capital offered its loans only to Wyly-related parties. Together these facts suggest that Security Capital functioned to make offshore assets available to the Wyllys to advance their interests.

#### **(a) Security Capital Formation and Operations**

Although Security Capital and the offshore bank that formed and administered Security Capital, Queensgate Bank & Trust Co. Ltd. (Queensgate), refused to provide interviews or information requested by the Subcommittee, the Wyllys' legal counsel and others provided the Subcommittee with their understanding of how Security Capital was established and operated. According to the Wyllys' legal counsel, in August 1998, with assistance from U.S. and Cayman legal counsel, Queensgate Bank formed both Security Capital Trust and Security Capital Ltd.<sup>872</sup> Security Capital Trust is a Cayman charitable trust whose

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<sup>872</sup> See 1/26/06 letter and attachments from Wyllys' legal counsel, Bickel & Brewer, responding to Subcommittee questions about Security Capital (hereinafter "Bickel & Brewer letter and attachments"). A chart entitled "Security Capital Timeline," states that Queensgate Bank settled the Trust and incorporated Security Capital Ltd. in August 1998. The incorporation

grantor and trustee is Queensgate Bank, the offshore bank that established it.<sup>873</sup> Security Capital Ltd. is a Cayman corporation that is wholly-owned by the Trust. Security Capital Ltd.'s directors are four Queensgate Bank employees and two Isle of Man residents who were also the managing directors of IFG and Trident. IFG and Trident are IOM companies that served as trustees of several Wyly-related offshore trusts whose corporations supplied funds and assets to Security Capital Ltd.<sup>874</sup>

According to the Wyllys' legal counsel, since its inception Security Capital has done business only with parties related to the Wyllys.<sup>875</sup> The Subcommittee has been told that neither Security Capital Trust nor Security Capital Ltd. has any employees or offices of its own; instead Security Capital Ltd. pays a fee to Queensgate Bank to administer its affairs.<sup>876</sup> Further, it is the Subcommittee's understanding that Security Capital owns no assets other than the offsetting loan payables and receivables related to its transactions with Wyly-related interests. Together, this evidence indicates that Security Capital was a shell corporation created for a single purpose: to function as a transit point for pass-through loans of cash and other assets among Wyly interests.<sup>877</sup>

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date for Security Capital Ltd. appears to be 8/24/98. First attachment at 1. Bickel & Brewer state that Michael French, Maples & Calder, Meadows Owens, and Jones Day helped to establish, develop, and oversee Security Capital and arrange its initial transaction. First attachment at 2; Chart entitled, "Professionals Involved In Development and Oversight." Maples & Calder told the Subcommittee, however, that it did not have Security Capital as a client and implied that it also did not work on matters pertaining to Security Capital. 3/23/06 letter from Maples & Calder to the Subcommittee at 1.

<sup>873</sup> Bickel & Brewer letter and attachments, first attachment at 1. The materials state that Security Capital Trust's beneficiaries are "any qualified charity designated by the trustee at the time the trust terminates." The materials state that, as of the date of the letter in January 2006, the Trust had not made any disbursement to any beneficiary. *Id.* To date, Security Capital Trust appears to have engaged in no activity other than holding the shares of Security Capital Ltd.

<sup>874</sup> *Id.* at 1. According to the Wyllys' legal counsel, Security Capital Ltd.'s directors are: John Dennis Hunter, Karla Bodden, Blair Gauld, Jane Fleming (who also serves as the corporation's sole officer), David Harris, and David Bester. The first four also work for Queensgate Bank in the Cayman Islands. Mr. Harris is the managing director of IFG, and Mr. Bester is the managing director of Trident.

<sup>875</sup> See Bickel & Brewer letter and attachments, first attachment at 2 ("So far as we know, Security Capital has only been involved in transactions in which companies, owned by the foreign trusts in which Wyly family members are beneficiaries, are involved.").

<sup>876</sup> *Id.* at 1. See also, e.g., 7/31/02 email from Ms. Boucher to Ms. Robertson (MAV010534)(stating Mr. Gauld, a Queensgate Bank director, "does the work on Security Capital").

<sup>877</sup> See Bickel & Brewer letter and attachments, first attachment at 1 ("Security Capital Ltd. was created as a special purpose vehicle (SPV) to participate in back-to-back credit facilities."); undated document providing an agenda for discussion between Irish Trust Group and Wyly family members on 3/27/01 (PSI00110232-33)(listing as one item: "Possible Loan

### (b) Security Capital Transactions In General

Over a five-year period, from 1998 to 2003, Security Capital Ltd. (Security Capital) participated in ten transactions with Wyly-related parties involving offshore assets totaling nearly \$140 million.<sup>878</sup> The general pattern was that a Wyly-related offshore entity loaned funds or assets to Security Capital, and Security Capital loaned the same amount of funds or assets to a Wyly-related party. Nine out of ten of the loan recipients were in the United States. Cash loans ranged from \$300,000 to \$25 million. One transaction involved the transfer of more than \$56 million in financial assets other than cash, including shares of stock and interests in real estate and partnerships.

Although the transactions involved different amounts and terms, the promissory notes obtained by the Subcommittee follow the same format and contain many virtually identical passages.<sup>879</sup> Each promissory note examined by the Subcommittee stated, for example, that it was an “unregistered debt instrument issued by a foreign lender to a United States of America obligor,” and a “portfolio debt investment” not subject to U.S. income taxation.<sup>880</sup> Each note stated that the “principal and interest payable per the terms and condition of this Note shall be payable only outside the United States,” and the “interest payable hereunder shall not be subject to income or excise taxation, including the imposition of any withholding taxes thereon, under the laws of the United States ... or any state or municipality thereof.” Each note also stated: “It is specifically understood and intended that no ‘United States Person’ (as that term is defined and interpreted under the taxation laws of the United States of America) shall ever be an owner or holder of this Note.”

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Arrangements via Special Purpose Vehicle administered at Queensgate to facilitate back to back transactions.”).

<sup>878</sup> Two charts summarize the ten transactions. See chart entitled, “Pass-Through Loans,” prepared by the Subcommittee Minority Staff and Bickel & Brewer letter and attachments, chart entitled, “Security Capital Loans” (hereinafter “Bickel & Brewer Security Capital Chart”).

<sup>879</sup> Because Security Capital and Queensgate Bank failed to provide requested information, the Subcommittee was unable to confirm with documentation all of the information provided about Security Capital by the Wyllys’ legal counsel. For example, the Subcommittee was not provided a complete set of all the promissory notes nor proof that certain “loans” had been repaid in full. The Wyllys’ legal counsel told the Subcommittee that the Wyllys provided copies of all the promissory notes in their possession, but that they did not have a complete set of signed notes. The following discussions of the Security Capital transactions indicate when the Subcommittee was unable to find documentation substantiating certain information provided about Security Capital.

<sup>880</sup> See, e.g., promissory note for the \$5 million loan issued to the Wrangler Trust (PSI\_ED00013667-70). The promissory note for the \$8 million loan issued to the Sam Wyly Malibu Trust used the phrase “unregistered bearer debt instrument.” (HST\_PSI089324).



Most of the promissory notes obtained by the Subcommittee did not require repayment of any principal at all until a specified date ranging from five to fifteen years in the future.<sup>881</sup> Most of these notes allowed the borrower to make an annual interest payment rather than a monthly or quarterly payment. All of the notes specified the applicable interest rate, which varied from a low of 4.1 percent to a high of 10 percent. Only three notes were secured with collateral.<sup>882</sup>

Security Capital apparently profited from these transactions by charging slightly higher interest rates on the “loans” it issued to Wyly interests in the United States, compared to the interest rates it paid on the corresponding “loans” obtained from the Wyly-related offshore corporations, thereby obtaining income on the interest rate spread.<sup>883</sup> When the Wyls’ legal counsel was asked why the Wyly-related interests in the United States paid the additional interest to Security Capital instead of obtaining the same loans directly from the offshore corporations at a lower cost, the Wyls’ legal counsel offered no explanation.<sup>884</sup>

The documents reviewed by the Subcommittee show that Wyly representatives, such as Keeley Hennington, head of the Wyly family office, were actively involved in processing the loan transactions as were employees with the Irish Trust Company. The documents show limited involvement of Queensgate Bank personnel, in part because Queensgate Bank did not produce documentation to the Subcommittee. The Isle of Man service providers also participated in the transactions, authorizing the loans to Security Capital and communicating with Wyly representatives about specific matters.

Some of the Security Capital transactions appear to have been handled in an informal manner, despite the large sums involved. For example, one transaction involving \$56 million in financial assets

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<sup>881</sup> For example, loans to Sam or Charles Wyly for \$10 and \$25 million required no payment of principal until fifteen years after each loan was issued; loans to Sam or Charles Wyly for \$15 and \$6 million required no payment of principal until ten years after each loan was issued; a \$5 million loan to the Wrangler Trust associated with Sam Wyly required no payment of principal until five years after the loan was issued. In contrast, a loan involving \$8 million loaned to the Sam Wyly Malibu Trust required monthly payments of principal and interest.

<sup>882</sup> The three loans with collateral were a \$3 million loan secured by a securities account belonging to a Green Mountain executive, a \$8 million loan secured by certain real estate in Malibu, California, and a \$5 million loan secured by a painting.

<sup>883</sup> Bickel & Brewer letter and attachments, first attachment at 4 (“Security Capital’s income was obtained on the basis of the interest rate differential between Security Capital’s borrowing and lending rates in various loan transactions.”). Later, Security Capital may have asked Charles Wyly for a \$500,000 “retainer.” See PSL\_ED00009136-37, 50 (December 2004 emails between Ms. Boucher and Ms. Hennington discussing request). But see Bickel & Brewer letter and attachments, attachment at 4 (denying retainer request was made by Security Capital).

<sup>884</sup> Bickel & Brewer letter and attachments, first attachment at 4.

actually transferred the assets to Cayman entities associated with Sam Wyly on June 1, 2001, but the related promissory notes apparently were not finalized and executed by the parties until nearly two years later in May 2003. A 2002 promissory note for \$5 million was apparently revised nine months after the loan was issued, but the note bears no indication that the terms were altered after-the-fact.<sup>885</sup> When the first interest payments were due under two credit lines established for Sam and Charles Wyly, the Wyly family office engaged in extensive discussions with the Irish Trust Company to pinpoint the dates on which specific amounts were provided under the credit lines and calculate the total amount of interest due. This casual treatment of the loan agreements, despite the millions of dollars at stake, is evidence that the loans were not arm's-length transactions and that Security Capital was established to facilitate loans to the Wyllys.

The funds and financial assets loaned in the ten transactions were used to support Wyly business ventures in the United States, capitalize newly-established Cayman corporations associated with Sam Wyly's children, and provide personal funds to Sam and Charles Wyly. Each of the ten transactions had unique elements. For example, one \$5 million loan was provided to the Wrangler Trust to purchase a famous Norman Rockwell painting, "Rosie the Riveter." Two were established to provide lines of credit for Sam and Charles Wyly. Two others were provided to supply investment funds to a Wyly-related energy business in the United States. Collectively, the Security Capital transactions loaned \$33 million in untaxed offshore dollars to Sam Wyly; \$31 million to Charles Wyly; \$56 million in financial assets other than cash to Cayman entities associated with Sam Wyly's children; \$14.5 million to Green Mountain, a Wyly-related U.S. business venture; and \$5 million to the Wrangler Trust, a U.S. trust formed by Sam Wyly. The Subcommittee has been told that five of these loans, totaling about \$27.5 million, have been repaid, while the remaining five, totaling about \$112 million, remain outstanding.<sup>886</sup>

### **(c) Three Security Capital Transactions**

The Subcommittee has summarized all ten of the Security Capital transactions that it was told took place from 1998 until 2003. Summaries of three of these transactions follow; the rest can be found in Appendix 4.

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<sup>885</sup> See discussion of this promissory note involving the Wrangler Trust in Appendix 4.

<sup>886</sup> See Bickel & Brewer Security Capital Chart.

**\$25 Million Loan to Charles Wyly.** In March 2003, Security Capital established a \$25 million line of credit for Charles Wyly.<sup>887</sup> Of the ten Security Capital transactions, this loan provided the largest single injection of offshore dollars into the United States. The funds for this loan were supplied to Security Capital by an Isle of Man corporation known as Gorsemoor Ltd., which was owned by the Tyler Trust, one of the Isle of Man trusts associated with Charles Wyly.<sup>888</sup> The offshore dollars loaned in this transaction were wired from an offshore corporation associated with Charles Wyly in the Isle of Man to Security Capital in the Cayman Islands to Charles Wyly's personal bank account in the United States.

The Subcommittee was told that the purpose of this transaction was to provide Mr. Wyly with personal funds.<sup>889</sup> The loan was unsecured, despite the substantial funds involved. No principal had to be repaid for fifteen years, the interest rate was 4.8 percent, and interest payments had to be made only once per year. By the end of 2003, Mr. Wyly had borrowed the entire \$25 million available in the credit line.<sup>890</sup> He apparently made the required interest payments in 2004 and 2005; it is unclear whether Security Capital used these funds to make the

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<sup>887</sup> See 3/1/03 Promissory Note between Security Capital and Charles Wyly (PSI00027427-30)(providing a \$25 million, 15-year revolving credit line, with a 4.80% interest rate, interest payments due in annual installments starting 3/1/04, and no repayment of principal until 2/28/18, when the loan was due in full; promissory note signed by Charles Wyly but not Security Capital). See also Bickel & Brewer Security Capital Chart.

<sup>888</sup> See Bickel & Brewer Security Capital Chart. The Subcommittee has not been provided with a copy of a promissory note between Security Capital and Gorsemoor, nor has it located documentation substantiating funds transfers from Gorsemoor to Security Capital, although other evidence suggests these transfers did occur.

<sup>889</sup> Bickel & Brewer Security Capital Chart.

<sup>890</sup> See, e.g., 10/15/03 email on "cw loans re: gorsemoor" (PSI\_ED00003264)(listing 5 drawdowns on the line of credit by September 2003, totaling \$23 million); 10/15/03 email (PSI\_ED00006106); undated document entitled, "Interest Calculation 50C/SECURITY CAPITAL" (PSI\_ED00012691)(listing 6 drawdowns on the line of credit by the end of 2003, totaling \$25 million).

corresponding interest payments to Gorsemoor.<sup>891</sup> Both loans related to this \$25 million transaction apparently remain outstanding.<sup>892</sup>

**\$10 Million Loan to Sam Wyly.** The most recent Security Capital transaction took place in July 2003, when Security Capital established a \$10 million line of credit for Sam Wyly.<sup>893</sup> The funds for this transaction were supplied to Security Capital by Newgale Ltd., an Isle of Man corporation owned by the Bessie Trust, one of the Isle of Man trusts associated with Sam Wyly.<sup>894</sup> The offshore dollars used in this transaction were wired from the offshore corporation associated with Sam Wyly in the Isle of Man to Security Capital in the Cayman Islands to Sam Wyly's personal bank account in the United States.

The purpose of this loan was to provide Mr. Wyly with personal funds.<sup>895</sup> No principal had to be repaid for fifteen years, the interest rate was 4.2 percent, and interest payments had to be made only once per year. By the end of 2003, Mr. Wyly had borrowed the entire \$10 million available in the credit line.<sup>896</sup> He apparently made the required interest

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<sup>891</sup> See, e.g., 2/24/04 email from Ms. MacInnis to Ms. Hennington and Ms. Boucher (PSI\_ED00012680-81)(jointly calculating interest due on credit line); undated document entitled, "Interest Calculation 50C/SECURITY CAPITAL" (PSI\_ED00012691)(listing 2003 drawdowns and calculating the interest due as \$888,393.44); undated document entitled, "INTEREST RECACULATION: \$25M PROMISSORY NOTE" (PSI\_ED00012690)(listing 2003 drawdowns for both Charles Wyly and Security Capital, and calculating the interest due to Security Capital at \$888,393.44 and the interest due to Gorsemoor at \$881,452.87); 2/25/04 wire transfer (IW001117)(showing Charles Wyly wired \$888,393.44 to Security Capital Ltd.); 3/10/05 series of emails among Ms. Hennington, Ms. Boucher, and Ms. Westbrook, on "Security Capital" (PSI\_ED00016108)(discussing interest payment due the next day, 3/11/05); 3/11/05 wire transfer (IW002128)(showing Charles Wyly wired \$1.2 million to Security Capital).

<sup>892</sup> See Bickel & Brewer Security Capital Chart; 12/31/04 financial statement for Charles Wyly (HST\_PSI006984)(under the category "Cash Flows In," and "Note Receivable," listing entry for Security Capital of \$25 million).

<sup>893</sup> See 7/15/03 Promissory Note between Security Capital and Sam Wyly (PSI00027417-20)(providing for a \$10 million, 15-year revolving credit line, with a 4.17% interest rate, interest payments due in annual installments starting 7/15/04, and no repayment of principal until 7/14/18, when the loan was due in full; promissory note signed by Sam Wyly and Dennis Hunter as director of Security Capital). See also Bickel & Brewer Security Capital Chart; 7/14/03 email discussing draft promissory note (PSI\_ED00002645-48).

<sup>894</sup> Bickel & Brewer Security Capital Chart. The Subcommittee has not been provided a copy of a promissory note between Security Capital and Newgale, nor has it located documentation substantiating funds transfers from Newgale to Security Capital, although other evidence suggests these transfers did occur.

<sup>895</sup> Bickel & Brewer Security Capital Chart.

<sup>896</sup> See, e.g., documents related to initial drawdown of \$6 million on \$10 million line of credit (PSI00038407-08)(discussing \$6 million drawdown), (BA095051, HST\_PSI010622)(showing \$6 million deposit from Security Capital in Sam Wyly's personal bank account on 7/23/03); documents related to September 2003 \$1.25 million drawdown (PSI\_ED00003029)("The \$1.25M will be wired from here to you on Monday. It just hit Security Capital."), (BA095060, HST\_PSI010393)(showing \$1.25 million deposit from Security Capital into Sam Wyly's account on 9/15/03); 9/23/03 document entitled, "Cash Report – SW"

payments in 2004 and 2005; it is unclear whether Security Capital used these funds to make the corresponding interest payments to Newgale.<sup>897</sup> Both loans associated with this \$10 million transaction apparently remain outstanding.<sup>898</sup>

Like the Charles Wyly credit line, this \$10 million credit line for Sam Wyly was provided without any collateral securing its repayment, despite the substantial funds involved. At the time the loan was first being considered, David Harris, managing partner of IFG and a director of Security Capital, inquired as to whether Sam Wyly would be willing to make a “negative pledge” that he would not encumber the stream of annuity payments due to him from East Carroll, one of the Isle of Man corporations, to ensure that these payments would be available to repay the credit line, if needed.<sup>899</sup> Sam Wyly declined to provide that pledge due to possible “unfavorable tax consequences,” but did give Security Capital a letter stating that one of his offshore annuities had sufficient assets to repay the \$10 million if necessary.<sup>900</sup>

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(PSI00040536); 9/30/03 “Cash Flow Summary-Domestic” for Sam Wyly (PSI\_ED00061524)(listing outstanding Security Capital loan of \$7,250,000); documents related to final \$2.75 million drawdown in October 2003, 10/21/03 email (PSI\_ED00011032-33)(“Security Capital will be wiring the final tranche of \$2.75M to SW in respect of the \$10M revolving credit note. You should expect the funds tomorrow.”; Ms. Hennington responded: “to the rescue”; Ms. Alexander responded: “Wonderful!!!!”); bank documentation (BA095064, HST\_PSI010330)(showing \$2.75 million deposit from Security Capital into Sam Wyly account on 10/21/03).

<sup>897</sup> See, e.g., July 2004 emails among Ms. Alexander, Ms. Boucher, and Ms. MacInnis jointly calculating interest owed (PSI\_ED00009759, PSI\_ED00011761-64)(listing 2003 drawdowns and calculating the interest due to Security Capital at \$374,141.67); undated document entitled, “\$10 MILLION REVOLVING NOTE,” (PSI\_ED00011759)(listing 2003 drawdowns for Sam Wyly and Security Capital, and calculating the interest due to Security Capital at \$373,157.88 and the interest due to Newgale at \$379,255.94); 7/15/04 wire transfer (BA095100, IW001524-25)(showing Sam Wyly wired \$374,141.67 to Security Capital); 7/15/05 wire transfer (IW002528)(showing Sam Wyly wired \$417,000 to Security Capital).

<sup>898</sup> Bickel & Brewer Security Capital Chart.

<sup>899</sup> See also series of July 2003 emails involving David Harris of IFG, Ms. Hennington, and Ms. Boucher (PSI00040540-42)(discussing possible line of credit and a “negative pledge” by Sam Wyly against encumbering the East Carroll annuity payments that could be used to repay the credit line).

<sup>900</sup> See 7/15/03 letter signed by Sam Wyly and addressed to Security Capital (PSI00027421)(“I am entitled to payments under a private annuity agreement between myself and East Carroll Limited, an Isle of [Man] Company. These payments are to commence on November 1, 2004 and be payable on an annual basis in the amount of \$2,934,856. Although my interest in this agreement is assignable, to do so may result in unfavorable tax consequences. As such, there is no intention to assign these agreements. However, if a need arises for an assignment, you will receive prior notification and if it is deemed necessary at that time and amounts remain outstanding on the Promissory Note, East Carroll Limited may be directed to make such payments directly to Security Capital until the balance of the Promissory Note is paid in full.”) See also 7/16/03 emails exchanged among Mr. Harris of IFG, Ms. Hennington, and Ms. Boucher discussing the wording of the Wyly letter (PSI00040540-42)(indicating that the Wyly letter was actually completed later than July 15, and backdated).

**\$56 Million Loan to Cayman LLCs.** The \$56 million Security Capital transaction was the largest of the ten and the most complex. On June 1, 2001, four Wyly-related offshore corporations transferred a number of financial assets to another Wyly-related offshore corporation called Greenbriar.<sup>901</sup> These assets included Michaels and Green Mountain stock; ownership interests in two Wyly-related hedge funds, Maverick and Ranger; and ownership interests in real estate used by the Wylys in the United States. On the same date, Greenbriar loaned the assets to Security Capital, along with additional financial assets of its own, and received in return a promise from Security Capital to pay Greenbriar about \$56 million.<sup>902</sup>

After receiving the assets from Greenbriar, Security Capital divided them up and transferred certain assets to each of the six Cayman limited liability corporations (LLCs) associated with Sam Wyly's six children.<sup>903</sup> The allocation of these assets by Security Capital followed a plan developed by Ms. Boucher, in consultation with Sam Wyly, to allocate various assets among his children.<sup>904</sup> In exchange, Security Capital apparently obtained from each LLC a promise to pay about \$9 million.<sup>905</sup> The Subcommittee was told that the purpose of this Security Capital transaction was to "capitalize" the newly created Cayman LLCs

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<sup>901</sup> The four IOM corporations were East Baton Rouge, East Carroll, Moberly, and Yurta Faf. In 2001, these corporations were owned by two IOM trusts, the Bulldog and Bessie Trusts, both of which were associated with Sam Wyly. Greenbriar was owned by the Delhi International Trust, which was also associated with Sam Wyly. It is unclear what consideration, if any, that Greenbriar paid to each of the corporations for the assets.

<sup>902</sup> Bickel & Brewer Security Capital Chart. The precise loan amount, \$55,815,672.03, was apparently derived from calculating the value of the financial assets transferred to Security Capital. It is unclear who performed this valuation. It is the Subcommittee's understanding that while the loan transaction took place on 6/1/01, Security Capital did not provide Greenbriar with a written promissory note for nearly two years, until May 2003. The Subcommittee does not have a copy of this promissory note.

<sup>903</sup> The six Cayman LLCs were Balch LLC, Bubba LLC, FloFlo LLC, Katy LLC, Pops LLC, and Orange LLC. All are wholly owned by the Bessie Trust.

<sup>904</sup> See, e.g., document entitled, "SW Foreign Trust Allocations to Sub-Funds based on 3/31/01 financials" (PSI00078293)(listing assets to be allocated among Sam Wyly's children; handwritten notations state: "completely revocable ... financial reporting to kids/onshore & off-shore ... 1992 trusts to 1994 trusts./loans ... 1992 -> Security Capital -> 1994"); 6/13/01 email from Ms. Boucher to Mr. Harris at IFG and Ms. Hennington, on "allocations to LLCs" (PSI\_ED00006047)(transmitting lengthy document entitled, "Summary of Proposed transactions," describing proposals to move the assets actually transferred during the Security Capital transaction); 6/14/01 email from Ms. Hennington to Ms. Boucher (PSI\_ED00006047)("I did not fully appreciate all you had to go through until I saw all this.").

<sup>905</sup> One LLC promised to pay \$8.3 million, while the other five promised to pay \$9.5 million each. See 12/31/01 financial statements for the LLCs (PSI00078959-64); 12/31/01 financial statement for "Foreign Systems (SW Total Family)" (PSI00078956). The Subcommittee does not have copies of the six promissory notes that were presumably created in connection with these loans.

with financial assets.<sup>906</sup> Each of the LLCs later increased the amount it owed to Security Capital to about \$11 million so that, by the end of 2004, the Cayman LLCs together owed Security Capital a total of about \$67 million.<sup>907</sup> All of the loans associated with this transaction apparently remain outstanding.<sup>908</sup>

#### (d) Analysis of Issues

Loans are a common way for persons with offshore assets to bring funds back into the United States. The Security Capital transactions appear to be a variation on the same theme. The twist here is that an offshore bank, Queensgate Bank, established a shell corporation, Security Capital, to act as the offshore “lender” and as a pass-through for the offshore funds supplied by entities associated with the borrowers. Over a five-year period, Security Capital functioned as a pass-through for \$140 million in offshore dollars and other financial assets that were loaned by Wyly-related offshore corporations to the Wyls and other Wyly-related parties. About \$56 million in financial assets went to the Cayman LLCs associated with the Sam Wyly’s children; the other \$84 million in offshore dollars went to Wyly-related persons and entities in the United States.

Security Capital is a prime example of an offshore device that used professional expertise and offshore secrecy to give U.S. citizens access to offshore assets. Bankers and lawyers designed Security Capital Trust as a charitable trust that was officially owned by no one, and could serve as an anonymous, passive parent of Security Capital Ltd. Security Capital Ltd. operated without any employees who could be held accountable for the company’s actions.<sup>909</sup>

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<sup>906</sup> See Bickel & Brewer letter and attachments, first attachment at 3 (“Shortly after the Cayman LLCs were organized, those entities acquired certain assets from Security Capital in exchange for promissory notes.”) and Bickel & Brewer Security Capital Chart.

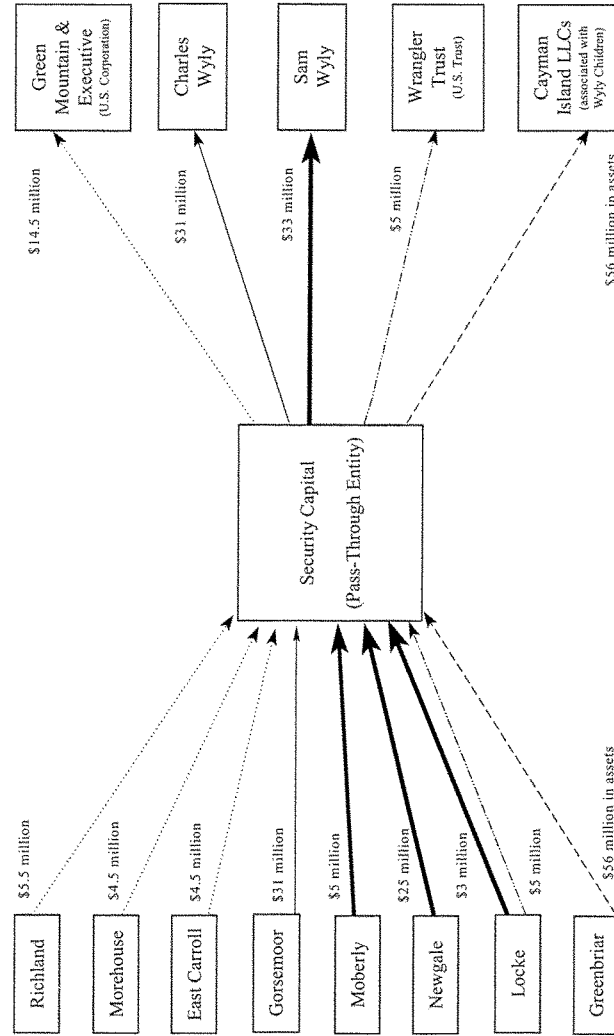
<sup>907</sup> See, e.g., 2004 financial statements for the six Cayman LLCs (PSI00071494-99)(indicating the LLCs together owe \$65.4 million in principal and \$2.1 million in interest to Security Capital, for a total of \$67.5 million).

<sup>908</sup> *Id.*; Bickel & Brewer letter and attachments, chart entitled, “Security Capital Loans.”

<sup>909</sup> Security Capital is not unique. In its investigation of Enron Corporation, for example, the Subcommittee uncovered similar offshore shell corporations that were established as allegedly independent entities but, in fact, were under the control of a single client and participated in transactions as pass-throughs for loans disguised as energy trades. See “The Role of the Financial Institutions in Enron’s Collapse,” hearings before the Subcommittee, S. Hrg. 107-618, at 15-16 (July 23 and 30, 2002)(discussing an Isle of Man shell corporation called Mahonia, used to disguise about \$4 billion in loans between J.P. Morgan Chase and Enron, and a Cayman shell corporation called Delta, used to disguise about \$5 billion in loans between Citigroup and Enron).

## Pass-Through Loans

(Trust-Owned Isle of Man Corporations)



Prepared by Permanent Subcommittee on Investigations, Minority Staff



# Security Capital Loans

Date	Lender	Borrower	\$	Interest Rate	Purpose	Repaid (R) / Maturity (M)
09/98	Richland	Security Capital	5,500,000	*	Green Mountain Loan	11/98* R
09/98	Morehouse	Security Capital	4,500,000	*	Green Mountain Loan	11/98* R
09/26/98	Security Capital	Green Mountain Energy Resource LLC	10,000,000	10.00%	Green Mountain Loan	11/25/98 R
10/98	East Carroll	Security Capital	1,500,000	*	Green Mountain Loan	10/22/99 R
10/98	Security Capital	Green Mountain Energy Resources LLC	1,500,000	*	Green Mountain Loan	10/22/99 R
01/99	East Carroll	Security Capital	3,000,000	6.00%	Green Mountain Loan	10/22/99 R
01/07/99	Security Capital	David White	3,000,000	6.00%	Green Mountain Loan	10/22/99 R
04/99	Locke and Moberly	Security Capital	8,000,000	6.25%	Sam Wyly Loan	2/13/02 R
04/14/99	Security Capital	Sam Wyly 1978 Malibu Revocable Trust	8,000,000	6.75%	Sam Wyly Loan (Secured by Malibu Property)	2/13/02 R
06/01/01	Greenbriar	Security Capital	55,815,672.03	5.4625%	LLC Capitalization	Open* M
06/01/01	Security Capital	Cayman LLC's	55,815,672.89	5.50%	LLC Capitalization	Open* M

## Exhibit A

Charts received as an attachment to 1/26/06 letter to the Permanent Subcommittee on Investigations from Wyly counsel, Bickel & Brewer.

# Security Capital Loans

Date	Lender	Borrower	\$	Interest Rate	Purpose	Repaid (R) / Maturity (M)
01/30/02	Greenbriar	Security Capital	15,000,000	5.4625%	Sam Wyly Loan	Replaced by Newgale loan
04/03	Newgale	Security Capital	15,000,000	5.4325%	Replaces Greenbriar loan from 1/30/02	02/15/12 M
01/30/02	Security Capital	Sam Wyly	15,000,000	5.50%	Sam Wyly Investment in Ranger	02/15/12 M
05/04/02	Locke	Security Capital	5,000,000	4.7125%	Wrangler Trust Loan	05/3/04* R
06/04/02	Security Capital	Wrangler Trust	5,000,000	4.75%	Wrangler Trust Loan (Secured by Wrangler Art)	05/03/04 R
10/01/02	Gorsemoor	Security Capital	6,000,000	4.8625%	Charles Wyly Loan	09/30/12 M
10/01/02	Security Capital	Charles Wyly	6,000,000	4.90%	Charles Wyly Investment in Ranger	09/30/12 M
03/01/03	Gorsemoor	Security Capital	25,000,000	4.7625%*	Charles Wyly Loan	02/28/18 M
03/01/03	Security Capital	Charles Wyly	25,000,000	4.80%	Charles Wyly Loan	02/28/18 M
07/15/03	Newgale	Security Capital	10,000,000	4.1325%	Sam Wyly Loan	07/14/18 M
07/15/03	Security Capital	Sam Wyly	10,000,000	4.17%	Sam Wyly Loan	07/14/18 M

Exhibit A

When the Subcommittee attempted to question the offshore bank that formed Security Capital, Queensgate Bank responded that it could not answer any questions about Security Capital transactions, because disclosing client-specific information would violate Cayman law. Neither Security Capital nor Queensgate Bank were willing to produce documents to the Subcommittee, such as Security Capital's formation documents, the promissory notes between Security Capital and the Wyly-related offshore corporations, or wire transfers substantiating some of the transactions in which Security Capital is said to have participated. The Wyly case history illustrates the fact that corporate and financial secrecy laws and practices in the Cayman Islands – as well as those in the Isle of Man – make it extremely difficult to determine who is behind an offshore entity, how it functions, and who should be held accountable for its actions.

Despite the obstacles in obtaining complete information, the evidence accumulated about the Security Capital transactions depicts multi-million-dollar loans that, over a five-year period, supported Wyly-related personal and business interests. Eight Wyly-related offshore corporations loaned substantial assets to Security Capital, despite the fact that Security Capital was a shell offshore corporation with no assets, employees, or offices of its own. Security Capital used these funds to issue loans with generous, unsecured terms to Sam and Charles Wyly, a U.S. trust associated with Sam Wyly, and a Wyly-related business venture and its executive in the United States. One \$56 million transaction implemented a complex asset transfer plan, developed in consultation with Sam Wyly and legal counsel, to transfer specified assets to Cayman corporations associated with his children. Together, these facts suggest that the Wylys were not only benefiting from, but also directing the Security Capital transactions to advance their personal and business interests.

Documents show that Wyly employees were actively involved in the Security Capital transactions. The evidence suggests further that some of the promissory notes for these multi-million-dollar loans were prepared or altered after-the-fact. In the case of the \$56 million loan, for example, the relevant promissory notes were apparently executed nearly two years after the transfer itself took place. Key terms in the \$5 million Wrangler promissory note, such as the interest rate and annual payment amount, were apparently revised nine months after Security Capital provided the \$5 million, without showing those alterations on the loan document. Loan agreements for several of the loans related to Green Mountain have yet to be produced. The involvement of Wyly personnel and the casual treatment of the promissory notes offer cumulative

evidence that the Security Capital transactions were directed by the Wyls and their representatives.

The economic reality behind the Security Capital transactions is that the Wyly-related offshore corporations were supplying the funds sent to the Wyly-related parties. A key question is why the Wyly-related parties did not simply obtain the funds directly from the offshore corporations instead of going through Security Capital. There are several possible explanations for inserting Security Capital in the middle of the borrowing chain. First, interposing Security Capital alleviated the need for direct wire transfers between the Wyly offshore and onshore interests that risked exposing the existence and dimensions of the Wyly offshore structure. Second, it helped disguise the fact that the Wyly offshore trusts were using their wholly-owned corporations to send large amounts of offshore cash to persons in the United States. Third, it helped hide the fact that the Wyls were making use of the assets they had sent offshore years earlier. If the IRS had discovered that the funds loaned to the Wyls had originated with offshore trusts that named Wyls as beneficiaries, the transactions could have raised questions about the source of the offshore dollars, whether the original funds or subsequent income were taxable, whether the Wyls exercised control over the offshore trusts, and whether the trusts themselves should be treated as taxable grantor trusts or shams.

### **(5) Supplying Offshore Dollars to Wyly Business Ventures**

During the thirteen years examined in this Report, hundreds of millions of untaxed, offshore dollars were transferred to business ventures controlled by the Wyls and their business associates. The Subcommittee analyzed five such business ventures that, together, received Wyly-related offshore dollars in excess of \$500 million. Nearly \$300 million of these funds were transferred to hedge funds and a private investment fund founded by Sam and Charles Wyly. These funds were invested primarily in the U.S. stock market and U.S. business ventures. About \$20 million in offshore loans and equity contributions were supplied to an offshore insurance company while that company was under Wyly control, and another \$14 million placed in annuity policies using investment advisers chosen by the Wyls. Still another \$175 million in offshore dollars were transferred to a U.S. energy business acquired by the Wyls.

In each instance examined by the Subcommittee, the business venture was recommended by the trust protectors and agreed to by the trustees of the Wyly-related offshore trusts. The Subcommittee saw no instance in which an offshore trustee, on its own, initiated an investment

in a business venture using Wyly-related offshore trust funds.<sup>910</sup> These five examples offer additional evidence that the offshore entities were taking direction from the Wyls and their representatives, supplying money and loans when asked and investing trust funds where told.

The five business ventures examined by the Subcommittee illustrate the issues involved.<sup>911</sup> From 1993 through 2004, these business ventures included two hedge funds, known as Maverick and Ranger, whose combined Wyly-related offshore investments totaled more than \$250 million; a private investment fund known as First Dallas, whose Wyly-related offshore investments exceeded \$43 million; an offshore insurance company known as the Scottish Annuity (Cayman), whose Wyly-related offshore investments exceeded \$20 million in loans and equity contributions and \$14 million in annuity assets; and a U.S. energy company known as Green Mountain, whose Wyly-related offshore investments totaled at least \$175 million.<sup>912</sup>

In each of these business ventures, legal, financial, tax, and other professionals helped to facilitate the investment of offshore dollars. For example, these professionals provided legal and financial advice and assistance to help the ventures get started, expand, borrow funds, resolve accounting issues, and go public. The complex transactions, paperwork, and offshore funding associated with the five business ventures could not have taken place without the many legal, financial, tax, and other professionals that advised the Wyls and the offshore entities.

#### **(a) Supplying Offshore Dollars to Hedge Funds**

The Wyly-related offshore entities' invested more than \$250 million in untaxed, offshore dollars in two hedge funds known as Maverick and Ranger. Both of these hedge funds were founded and managed for years by Wyly family members. By agreeing to transfer funds to the Wyly-related hedge funds, the Isle of Man (IOM) entities

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<sup>910</sup> In separate interviews, Mr. French, Ms. Hennington, and Ms. Robertson also told the Subcommittee that they knew of no such instance. Each told the Subcommittee that investments by the offshore entities had been initiated by Wyly family members. Subcommittee interviews of Mr. French (4/21/06 and 6/30/06), Ms. Hennington (4/26/06), and Ms. Robertson (3/9/06).

<sup>911</sup> The business ventures examined in this Report are limited to those that received a substantial amount of funding from Wyly-related offshore entities; the Report does not discuss Wyly-related business ventures that appear to have been funded substantially or wholly with domestic funds.

<sup>912</sup> Additional Wyly-related business ventures also appear to have been funded in whole or in substantial part with untaxed offshore dollars. However, detailed analysis will be confined to these five examples, which illustrate the issues involved.

ensured that the funds would be further invested under the direction of the Wyllys.

### (i) Hedge Funds Generally

In the United States, hedge funds are lightly regulated, private investment funds that pool investor contributions to trade in securities or make other investments. Most U.S. hedge funds are structured as limited partnerships, in which the general partner manages the fund for a fixed fee and a percentage of the fund's gross profits, and the limited partners function as passive investors.<sup>913</sup> Investors generally sign a "subscription agreement" specifying the investor's ownership interest in the fund, which may be in the form of shares, limited partnership interests, or ownership units, all of which are treated as unregistered securities.<sup>914</sup> Many U.S. hedge funds sponsor one or more offshore funds, which are administered offshore, keep their subscription agreements and other records offshore, and minimize contacts with the United States, other than typically using the same investment manager as their U.S. counterpart.

Unlike mutual funds, U.S. hedge funds typically are not required to register their securities with the SEC. Instead, as long as the hedge fund does not offer its securities to the public, and has fewer than 100 beneficial owners or accepts only sophisticated investors, such as individuals with at least \$5 million in investments, it is exempt from the Investment Company Act of 1940 and the Securities Act of 1933.<sup>915</sup> The reasoning behind these exemptions is that "privately placed investment companies owned by a limited number of investors do not rise to the level of federal interest."<sup>916</sup> In December 2004, the SEC issued a regulation requiring persons who direct a hedge fund's investments to register with the SEC as an investment advisor and disclose a minimal

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<sup>913</sup> See Goldstein v. SEC, Case. No. 04-1434 (D.C. Cir. 6/23/06), slip opinion at 4-5; 12/31/02 Report to Congress by Treasury, Federal Reserve, and the SEC pursuant to Section 356(c) of the Patriot Act (hereinafter "Report to Congress"), at 19-24 (discussing hedge funds).

<sup>914</sup> See, e.g., 12/31/02 Report to Congress, at 20 in footnote 67, and 22.

<sup>915</sup> These exemptions appear in Sections 3(c)(1) and (c)(7) of the Investment Company Act of 1940, and Section 4(2) of the Securities Act of 1933. See also Section 2(a)(51) of the Investment Company Act for the definition of a "qualified purchaser" and Section 4(2) of the Securities Act for the definition of an "accredited investor." See also Goldstein v. SEC, Case No. 04-1434, slip opinion at 3 (D.C. Cir. 6/23/06).

<sup>916</sup> "Implications of the Growth of Hedge Funds," prepared by the SEC staff (9/03), at 1-2.

amount of information about the hedge fund; however, this regulation was recently invalidated by the D.C. Circuit Court of Appeals.<sup>917</sup>

In addition to minimal SEC regulation, hedge funds are currently exempt from U.S. anti-money laundering laws. They are not required to institute an anti-money laundering program, know who their customers are, or report suspicious activity to law enforcement, despite significant money laundering vulnerabilities.<sup>918</sup> In 2002, the Treasury Department proposed a rule that would require hedge funds, among other types of unregistered investment funds, to institute anti-money laundering procedures, but four years later has yet to finalize that rule.<sup>919</sup>

With respect to U.S. taxes, most hedge funds are organized as partnerships, file 1065 informational tax returns with the IRS, and provide information about gains and losses to their partners for inclusion in the partners' individual tax returns. Some hedge funds organized as corporations must file 1099 forms with the IRS reporting payments made to clients.<sup>920</sup> Hedge fund clients are then responsible for including any hedge fund gains in their taxable income. If a U.S. hedge fund sponsors an offshore investment fund, however, that offshore fund is typically structured as a foreign entity outside of U.S. tax law and does not file U.S. tax returns or report payments made to offshore clients. In 1999, the President's Working Group on Financial Markets noted that a significant number of hedge funds operated in tax havens and may be associated with illegal tax avoidance.<sup>921</sup>

## (ii) Maverick Hedge Fund

Sam and Charles Wyly founded their first hedge fund, Maverick, in April 1990, prior to the establishment of any of the Wyly-related offshore entities.<sup>922</sup> Maverick began as a Wyly family business venture,

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<sup>917</sup> See *Goldstein v. SEC*, Case No. 04-1434 (D.C. Cir. 6/23/06). Hedge fund advisers had been required to register with the SEC by 2/1/06.

<sup>918</sup> See, e.g., proposal to make hedge funds subject to anti-money laundering requirements, 67 Fed. Reg. 60617 (9/26/02); 12/31/02 Report to Congress, at 23.

<sup>919</sup> See "Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Unregistered Investment Companies," 67 Fed. Reg. 60617 (9/26/02); "Implications of the Growth of Hedge Funds," prepared by the SEC staff (9/03), at 30-31.

<sup>920</sup> See 26 U.S.C. § 6042(a)(on reporting dividends), § 6049(a)(on reporting interest), and § 6045 (on reporting securities transactions).

<sup>921</sup> Report of the President's Working Group on Financial Markets, "Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management," (1999), at 41, cited in 12/31/02 Report to Congress, at 24.

<sup>922</sup> See, e.g., 4/12/94 "Maverick Overview" (PSI00121392-97).

investing funds solely on behalf of family members.<sup>923</sup> Originally, it consisted of a single investment fund, organized as a Cayman corporation.<sup>924</sup> Over time, Maverick established multiple investment funds in the United States and Cayman Islands. In 1993, the Wyls decided to open the hedge fund to outside investors.<sup>925</sup> As a first step, Sam and Charles Wyly established Maverick Capital Ltd., a Texas limited partnership, to serve as the hedge fund's investment manager and general partner.<sup>926</sup> Maverick Capital hired Lee S. Ainslie III, a well-known hedge fund adviser, to invest Maverick funds. He began as co-investment manager with Sam Wyly, became the sole manager in 1995, and continues today to lead Maverick's investment strategies.<sup>927</sup> Sam Wyly's son, Evan Wyly, also became a principal of the hedge fund.

**Offshore Dollars.** The Wyly-related offshore entities began transferring funds to Maverick in 1993.<sup>928</sup> The offshore entities appear to have acted after receiving recommendations from the trust protectors, Mr. French, Ms. Robertson, and later Ms. Boucher.<sup>929</sup> Mr. French and Ms. Robertson each told the Subcommittee that the offshore entities did not invest trust assets without receiving a recommendation from them, and that they, as trust protectors, did not independently select trust

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<sup>923</sup> *Id.*

<sup>924</sup> This Cayman corporation was initially named First Dallas International Ltd. See, e.g., 10/10/93 letter from Ms. Robertson to Keith King (PSI00054717-18).

<sup>925</sup> 4/12/94 "Maverick Overview" (PSI00121392-97); Subcommittee interview of Maverick (2/2/06).

<sup>926</sup> 4/12/94 "Maverick Overview" (PSI00121392-97); 6/30/95 "Maverick Income Fund" private placement memorandum (PSI00117269-88, at 76). Maverick Capital Ltd. was originally named Dallas Asset Management Ltd. See 6/30/00 "Assignment of Partnership Interest" (PSI00025935-36). Maverick Capital Ltd. is registered with the SEC as the hedge fund's investment advisor.

<sup>927</sup> *Id.*

<sup>928</sup> See, e.g., 2/20/94 fax from Meespierson (Cayman) Ltd. to Lorne House (PSI00123693)(discussing East Baton Rouge's 1993 investment of about \$400,000 in Maverick Fund Ltd.).

<sup>929</sup> See, e.g., 3/28/95 fax from Lorne House to Ms. Robertson and Mr. French (PSI00120816)("Thank you for your overnight fax. There follows a copy of our fax to Michelle Boucher ... regarding the investment into the new Maverick Growth and Income Fund."); 12/16/96 fax from Ms. Boucher to Lorne House (PSI00121027)("The protectorate committee recommends that Little Woody Limited and Roaring Fork Limited redeem all of their holdings in Maverick Income Fund LDC, and invest the proceeds directly into Maverick Fund Ltd."); 9/29/00 email from Ms. Boucher to IFG (MAV008181)("It is expected that a recommendation will follow later this month for Little Woody Limited to acquire part of Moberly's investment in Precept Fund. ... In order to provide liquidity for this purchase, it is recommended that \$10Million be redeemed from Maverick Fund.").



investments but made their recommendations only after receiving instructions from Sam or Charles Wyly or one of their representatives.<sup>930</sup>

By September 2001, according to internal Wyly records, the offshore entities had invested more than \$125 million in Maverick's offshore funds.<sup>931</sup> Of this amount, seven IOM corporations, East Baton Rouge, East Carroll, Moberly, Morehouse, Richland, Tensas, and West Carroll, had placed about \$29 million in Maverick's offshore funds.<sup>932</sup> Another \$4 million had been placed in Maverick's offshore levered funds by East Carroll and the six Cayman LLCs associated with Sam Wyly's six children.<sup>933</sup> Another \$31 million was supplied to Maverick Fund Ltd. by Ranger Fund Ltd., an offshore fund sponsored by a second Wyly-related hedge fund.<sup>934</sup>

In addition, years before, the Lake Providence International Trust, an Isle of Man trust associated with Sam Wyly, had purchased an annuity policy from Scottish Annuity Company (Caymans) Ltd. (SAC) and then designated Maverick as the investment manager for the annuity assets. So had Castle Creek International Trust, an IOM trust associated with Charles.<sup>935</sup> Due to these designations, Maverick had assumed investment control of the annuity assets, which in 2001, totaled about \$52 million.<sup>936</sup>

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<sup>930</sup> Subcommittee interviews of Mr. French (4/21/06 and 6/30/06) and Ms. Robertson (3/9/06). See also, e.g., 12/22/99 email from Ms. Boucher to Evan Wyly with copy to Ms. Robertson (PSI\_ED00069988)("As you recall, due to tight cash constraints we are liquidating Maverick Fund shares at 1/1/00 to fund Greenmountain cash requirements. What is the timing of wanting to exercise the MIKE options - can we try for additional redemption from Maverick[?]"); 8/31/01 email from Ms. Boucher to Sam Wyly and Ms. Huebner with copies to Evan Wyly, Ms. Hennington, and Ms. Robertson (PSI\_ED00064869-71)(seeking Sam Wyly's reaffirmation of his earlier decision to cause Lake Providence International Trust to redeem \$30 million worth of Maverick shares for cash which could then be used on other matters of interest to the Wylys).

<sup>931</sup> See, e.g., 9/30/01 document including information on "Maverick Investments -- Foreign" (PSI\_ED00019789-91).

<sup>932</sup> *Id.* at PSI\_ED00019790.

<sup>933</sup> *Id.* at PSI\_ED00019791.

<sup>934</sup> *Id.* at PSI\_ED00019789-90.

<sup>935</sup> See, e.g., 12/4/00 email from Ms. Boucher to Evan Wyly on "lake providence/castle creek -- scottish annuity policy withdrawals" (MAV012080)(indicating both policies had funds invested in Maverick shares).

<sup>936</sup> See 9/30/01 document including information on "Maverick Investments -- Foreign" (PSI\_ED00019789-91). A number of SAC annuity holders apparently designated Maverick as their investment manager, resulting in SAC's placing a total of more than \$212 million with the hedge fund in 2001. 3/23/06 letter from Maverick's legal counsel to the Subcommittee (hereinafter "Maverick letter"), at 3; Subcommittee interview of Maverick (2/2/06).

By the end of 2004, internal Wyly financial records show that the investments of the offshore entities associated with Sam Wyly had grown to more than \$43 million in Maverick, while the investments of the offshore entities associated with Charles Wyly had grown to more than \$87 million, for a combined total of more than \$130 million.<sup>937</sup>

**Wyllys Directing Maverick Investments.** Maverick managed all of the offshore dollars supplied by the Wyly-related offshore entities. Maverick's investment decisions were made at first by Sam and Charles Wyly and, after 1993, by Maverick Capital Ltd., the Wyly hedge fund's SEC-registered investment advisor. From 1993 until about 2000, Maverick Capital Ltd. was owned and controlled by Sam and Charles Wyly, as explained below. Placing offshore funds in a hedge fund that they had founded and controlled was one more way the Wyllys were able to maintain direction over the investment of the untaxed assets they had sent offshore.

Maverick told the Subcommittee that it invested most client funds in publicly traded stocks on the U.S. stock markets. Maverick told the Subcommittee that it rarely put money into nonpublic investments.<sup>938</sup> On several occasions, however, Maverick invested client funds in Wyly-related business ventures. For example, beginning in 1997, Maverick became a major shareholder of Green Mountain, a private energy company acquired by the Wyllys, as explained further below. Maverick used about \$40 million to buy Green Mountain common and preferred stock, and another \$4.2 million to buy Green Mountain debt securities. It also accumulated capitalized interest and other fees totaling about \$1.7 million, for a combined total Green Mountain investment of about \$46 million.<sup>939</sup> Maverick continued to invest in this venture even though, every year from its inception, Green Mountain lost money. Today, Maverick holds about 12 percent of Green Mountain's outstanding stock. Despite its \$46 million investment, Maverick recently wrote down the market value of its Green Mountain stock to zero, due to the company's poor performance.<sup>940</sup> Absent Wyly interest in Green

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<sup>937</sup> 12/31/04 financial statement for "Global SW Family" (PSI\_ED00095232-33)(providing "Total Maverick" investments under "SW Foreign Total Family FMV") and for "Global CW Family" (HST\_PSI006887)(providing "Total Maverick" investments under "CW Foreign Total Family FMV").

<sup>938</sup> Subcommittee interview of Maverick (2/2/06). Maverick told the Subcommittee that, currently, less than one percent of its funds are in nonpublicly traded investments.

<sup>939</sup> 3/23/06 Maverick letter at 5. Presumably, these client funds were associated with the Wyllys.

<sup>940</sup> Subcommittee interview of Ms. Robertson (3/9/06).

Mountain, it seems doubtful that Maverick would have invested such substantial funds over so many years in that company.

Maverick also invested client funds in the Scottish Re Group, the offshore insurance venture associated with Sam Wyly and Michael French.<sup>941</sup> In November 1998, Maverick used \$10 million to buy over 700,000 Scottish shares and 200,000 Scottish warrants from Scottish as part of the company's initial public offering. Over the next three months, Maverick spent another \$11 million in open market transactions to buy an additional 979,000 shares. From March 1999 through June 2001, Maverick sold virtually all of the Scottish shares for an aggregate sales price of about \$21 million. During May 2003, Maverick exercised the Scottish warrants at an aggregate exercise price of \$3 million and sold the shares for about \$3.8 million. Maverick also appears to have allowed its Wyly-related offshore clients to "lend" their Maverick shares to Scottish Re to strengthen its balance sheet when it first got underway and again later when it prepared to go public, as explained further below.

By the end of 1997, the Scottish Annuity Company (Cayman) Ltd. (SAC) had become "the largest single investor in Maverick Fund."<sup>942</sup> At its height in 2001, SAC had over \$200 million in client funds being managed by Maverick.<sup>943</sup> In 2004, however, some SAC investors withdrew their funds from Maverick and either switched to Ranger or placed their funds elsewhere. By the end of 2005, Scottish Re had only about \$14 million in client funds at Maverick.<sup>944</sup>

In addition to Green Mountain and Scottish Re, Maverick purchased 100,000 shares of Michaels Stores in 1993, and another 100,000 in 1994 and 1995, later selling all 300,000 shares in 1997.<sup>945</sup> It also purchased 300,000 shares of Sterling Software in 1993, and sold them in 1997.<sup>946</sup> Together these investments show how offshore funds

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<sup>941</sup> 3/23/06 Maverick letter, at 3. Initially, the company was known as Scottish Annuity & Life Holdings.

<sup>942</sup> 11/7/97 "SAC 98 Plan," authored by Mr. French (PSI\_ED00044927-28).

<sup>943</sup> See discussions of Maverick and Ranger above.

<sup>944</sup> "Scottish Re: Presentation to the Permanent Subcommittee on Investigations" (4/18/00) at 46, 52. All \$14 million appears to belong to an offshore entity associated with Charles Wyly. See 12/31/04 internal Wyly financial report entitled, "Family Offshore" (HST\_PSI006889)(including entries for "CW Foreign Total Family FMV," and "SAC Policy -- Maverick Levered").

<sup>945</sup> See Schedules 13D filed by Maverick regarding Michaels Stores.

<sup>946</sup> See Schedules 13D filed by Maverick regarding Sterling Software.

placed with Maverick may have been used to help boost other Wyly-related businesses.

Today, Maverick has over \$11 billion in assets under management.<sup>947</sup> Mr. Ainslie and Evan Wyly continue as its principals.

**Maverick Ownership and Management.** Maverick began as a single Cayman corporation. In 1993, when the hedge fund was reorganized as a limited partnership and opened to other investors, Maverick Capital Ltd. became its general partner. At that time, Maverick Capital Ltd. was controlled by Sam and Charles Wyly who were its sole general partners and senior executives.<sup>948</sup> As of June 1996, Sam Wyly's family held a 67 percent ownership interest and Charles' family held a 33 percent ownership interest.<sup>949</sup> Maverick Capital Ltd. exercised control over the hedge fund's investments.

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<sup>947</sup> 3/31/06 Form ADV filed with the SEC by Maverick Capital Ltd. at 3. Maverick told the Subcommittee that it now has nearly 1,000 investors.

<sup>948</sup> Initially, Charles Wyly served as chairman of Maverick Capital Ltd., while Sam Wyly served as its president. See, e.g., 4/12/94 "Maverick Overview" (PSI00121392-97). Evan Wyly served as a managing director, as did Mr. French. Ms. Robertson, head of the Wyly family office, served as the treasurer of Maverick Capital, while the family's tax director, Keith Hennington, served as Maverick's tax manager. A number of employees, including Mr. French, Ms. Robertson, and Mr. Hennington, were simultaneously on the payroll of Maverick, the Wyly family office, and other Wyly-related businesses, splitting their time among the various enterprises.

<sup>949</sup> 6/6/97 memorandum from Sam to Charles Wyly (PSI00109863-64). One document showing the extent of Wyly control over Maverick is a 6/6/96 memorandum from Sam to Charles Wyly entitled, "Maverick Discussion Sheet." (PSI00109863-64). In it, Sam discussed Charles' plan to reduce his Maverick ownership from a one-third share to a five percent share:

"Existing ownership of Maverick is 66.88% Sam's Family and 33.12% Charles' Family. Charles' Family will reduce to 5% ownership. ... In exchange for retaining 5% of Maverick a minimum balance of \$40 mm will be retained in the Hedge funds. Income may be distributed and losses do not need to be made up. Additionally, Charles' Family agrees to not pull out funds in excess of \$1,000,000 per quarter without a six month notice. Approximate balances at 5/31/96 are:

Maverick Funds USA – Entrepreneurs and Miller	3,264,254
Maverick Income Fund – Entrepreneurs and Aspen	2,966,025
Maverick Fund, LDC – IRA, Pension and Foreign	24,372,333
Maverick Income, LDC – Foreign	<u>9,525,113</u>
Total	<u>40,127,725"</u>

The bulk of Maverick "balances" at the time involved funds supplied by "Foreign" entities, presumably the Wyly-related offshore trusts and corporations. In this memorandum, Sam and Charles Wyly appear to have been making commitments on behalf of the offshore entities not to "pull out" more than \$1 million per quarter without notice.

Two years later, in 1998, Charles Wyly apparently sold his general partnership interest in Maverick Capital Ltd., and by the end of 2000, Sam and Charles Wyly had withdrawn from Maverick's management in favor of Evan Wyly and Mr. Ainslie.<sup>950</sup> Today, Maverick Capital Ltd.'s sole general partner is Maverick Capital Management LLC (formerly Maverick Capital General LLC), which is owned by Mr. Ainslie and Marmalade Ltd., a company that benefits Evan Wyly and his family.<sup>951</sup> Evan is the manager of Maverick Capital Management LLC.<sup>952</sup> Maverick Capital Ltd. also has a number of limited partners, all of whom are Wyly family members, Wyly or Maverick employees, or entities controlled by those persons.<sup>953</sup>

### (iii) Ranger Hedge Fund

In August 2001, about one year after leaving Maverick's management, Sam Wyly founded a second hedge fund known as Ranger.<sup>954</sup> Ranger also began as a Wyly family investment fund, but within months was opened to other investors.<sup>955</sup> Sam Wyly's involvement with the hedge fund was well publicized and was apparently one of the marketing factors used to attract clients.<sup>956</sup> Like Maverick, Ranger sponsored investment funds both in the United States and Cayman Islands.

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<sup>950</sup> Subcommittee interview of Maverick (2/2/06).

<sup>951</sup> See 3/23/06 letter from Maverick's legal counsel, Shearman & Sterling, responding to questions from the Subcommittee (hereinafter "Maverick letter"), at 1-2.

<sup>952</sup> 3/31/06 Form ADV filed with the SEC by Maverick Capital Ltd. at signature page.

<sup>953</sup> *Id.* See also 3/23/06 Maverick letter.

<sup>954</sup> Some Ranger materials state that Charles Wyly was a co-founder of Ranger, but other evidence suggests he was not involved in the management of this hedge fund. See, e.g., December 2002 Private Placement Memorandum for Ranger Hedged Equity (Offshore) Ltd., Cayman fund of Ranger Investments (PSI\_ED00038917-80, at 33-34)(listing Charles Wyly as a co-founder with Sam Wyly of Ranger Capital Group).

<sup>955</sup> See, e.g., "Ranger Capital gets ready for October 1 launch," [Infovest21 News](#) (8/20/01).

<sup>956</sup> See, e.g., 9/10/03 emails exchanged between Ms. Hennington and Evan Wyly (PSI\_ED00003022-23)(Evan wrote: "Sam is asking about his idea of restructuring Ranger ownership"; Ms. Hennington responded in part: "Ranger may have a hard time not being able to use Sam's name as being behind Ranger because I think they rely on this heavily in marketing."); "Wyly bets boredom wins big," [Dallas Morning News](#) (12/26/03)(linking Sam Wyly with Ranger and admiring his investment "intuition"); "Ranger Capital Builds European Base," [HedgeWorld Daily News](#) (1/7/04)("Sam Wyly's Ranger Capital Group opened an office in Geneva, Switzerland"); "Hedge funds well-represented on billionaire list," [Alternative Investment News](#) (3/20/06)(listing Sam Wyly from Ranger Capital Group).

**Offshore Dollars.** Wyly-related offshore entities supplied millions of offshore dollars to Ranger from its inception. According to internal Wyly records, by August 31, 2001, the end of Ranger's first month of operation, Wyly-related offshore entities had apparently sent more than \$100 million to the hedge fund.<sup>957</sup> Nine IOM corporations, East Baton Rouge, East Carroll, Devotion, Greenbriar, Locke, Moberly, Sarnia Investments, Tensas, and West Carroll, had provided a total of more than \$81 million.<sup>958</sup> The six Cayman LLCs associated with Sam Wyly's children had supplied another \$21 million.<sup>959</sup>

In addition, in 2001, Scottish Re, the offshore insurance group associated with Sam Wyly and Michael French, invested at least \$30 million in client funds in Ranger.<sup>960</sup> These funds were provided through annuity policies issued by Scottish Re in which the policyholders supplied the annuity premiums and recommended Ranger as their investment manager. By the end of 2005, the amount of Scottish Re client funds in Ranger had increased to \$54 million.<sup>961</sup>

By the end of 2004, internal Wyly financial records show that funds invested by the offshore entities associated with Sam Wyly had grown to more than \$79 million in Ranger, while the funds invested by

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<sup>957</sup> See, e.g., 9/30/01 document including information on "Maverick Investments – Foreign" (PSI\_ED00019789-91).

<sup>958</sup> *Id.* at PSI\_ED00019790.

<sup>959</sup> *Id.* at PSI\_ED00019789-90.

<sup>960</sup> Subcommittee interview of Ranger (11/10/05). Later information provided by Ranger indicates that \$30 million is likely too low, but they did not have a precise amount. Information provided by Ranger (6/21/06).

<sup>961</sup> "Scottish Re: Presentation to the Permanent Subcommittee on Investigations" (4/18/00) at 46, 52. In 2003, a Ranger employee asked Ms. Boucher "whether certain of the offshore Scottish [insurance] policies ... currently invested with Mav[erick] could be invested with Ranger ... without breaching the investor control issues currently in place." This Ranger employee wrote: "[After] stripp[ing] out all references to any individual so as to keep you and Keeley calm ... I would think that [xxx] and certainly [xxxxxxx] would be able to invest in ... Ranger Multi Strategy." 9/22/03 email from Robert Chambers of Ranger Capital to Ms. Boucher, with copy to Ms. Hennington (PSI\_ED00003108-09). This question apparently arose, because of U.S. tax rules related to annuitants controlling the investment of their annuity assets. See, e.g., Subcommittee interview of Mr. French (4/21/06) at 229-232. At issue was whether Sam or Charles Wyly "controlled" Ranger. Ultimately, it appears that offshore entities associated with Charles but not Sam Wyly moved their SAC funds from Maverick to Ranger. Compare, e.g., 12/31/04 internal Wyly financial report for "Global CW Family" (HST\_PSI006887)(listing \$19 million entry under "CW Foreign Total Family FMV" for "SAC Policy in RMS Class 1," where "RMS" refers to the Ranger Multi-Strategy investment fund) with 12/31/04 internal Wyly financial report for "Global SW Family" (PSI\_ED00095232-33) (listing no SAC policy entry related to Ranger).

the offshore entities associated with Charles Wyly had grown to more than \$49 million, for a combined total of more than \$128 million.<sup>962</sup>

Like Maverick, the offshore dollars placed with Ranger appear to have been invested after the relevant offshore trust received a recommendation from the trust protectors who, in turn, had received direction from Sam or Charles Wyly or their representatives.<sup>963</sup> Ranger normally invested client funds in U.S. securities or in a fund of hedge funds. The Ranger Fund also placed about \$31 million with the Maverick Fund Ltd.<sup>964</sup> Today, Ranger has about \$370 million in assets under management.<sup>965</sup>

**Ranger Ownership and Management.** Ranger currently has three groups of investments funds, Ranger Investments, Ranger Advisors, and Ranger Family Fund, each of which has a complex ownership structure with entities ultimately traceable, in part, to Sam Wyly, his son-in-law Jason Elliott, and Scott Cannon, who once worked as Green Mountain's chief financial officer.<sup>966</sup>

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<sup>962</sup> 12/31/04 financial statement for "Global SW Family" (HST\_PSI006886)(providing "Total Ranger" investments under "SW Foreign Total Family FMV") and for "Global CW Family" (HST\_PSI006887)(providing "Total Ranger" investments under "CW Foreign Total Family FMV").

<sup>963</sup> See, e.g., 5/31/01 email from Ms. Boucher to IFG (CC012663)("East Carroll should go to Ranger Fund LLC ... Locke's money should go to Ranger Fund Ltd."); 4/30/01 email from Ms. Boucher to Ms. Huebner for Sam Wyly (PSI\_ED00080054)(Ms. Boucher wrote: "I need to go out to the trustees tonight to request the additional \$2.5M investment in Ranger tonight." Ms. Huebner responded: "I faxed his OKAY.").

<sup>964</sup> 9/30/01 document on "Maverick Investments-Foreign" (PSI\_ED00019789-90). Apparently, about \$3 million of these offshore dollars had been supplied by Greenbriar and Sarnia Investments. *Id.* at PSI\_ED00019790.

<sup>965</sup> Information provided by Ranger (6/21/06).

<sup>966</sup> With respect to Ranger Investments, for example, the SEC-registered investment manager is Ranger Investment Management LP, a Delaware limited partnership. 3/17/06 Form ADV for Ranger Investment Management LP, at 17-22. The general partner of Ranger Investment Management LP is Ranger Investment Group LLC, a Delaware limited liability corporation. Ranger Investment Group LLC is owned by Ranger Capital Group Holdings LP (RCGH), another Delaware limited partnership, and by David Anthony and Michael Durante. RCGH's general partner is Ranger Capital Group LLC, which was founded by Sam and Charles Wyly and apparently is currently owned by Mr. Elliott and Mr. Cannon. RCGH's limited partners include Sam Wyly and several Ranger employees. Ranger Advisors has a similar ownership structure. Its SEC-registered investment manager is Ranger Advisors LP (formerly named Ranger Capital Ltd.), whose general partner is RCGH and whose limited partner is Ranger Management LLC. 1/9/06 Form ADV for Ranger Advisors LP, at 21-22. As explained, RCGH's ultimate owners include Mr. Elliott, Mr. Cannon, and Mr. Wyly. In the case of the Ranger Family Fund, its SEC-registered investment manager is Ranger Fund Management LP, whose general partner is Ranger Fund Management LLC and whose limited partner is RCGH. 3/27/06 Form ADV for Ranger Fund Management LP, at 17-19.

As with the offshore entities' investments with Maverick, Ranger illustrates how the Wylys were able to exercise direction over the untaxed, offshore dollars held by the Wyly-related offshore entities. They did so by directing the offshore entities to transfer the funds to a Wyly-related hedge fund for further investment. Altogether, the offshore trustees invested more than \$250 million with Maverick and Ranger.

**(b) Investing Offshore Dollars in a Private Investment Fund**

Hedge funds were not the only investment vehicles that received Wyly-related offshore dollars. Another was a private investment fund known as First Dallas, which received funds from offshore entities associated with Charles Wyly totaling at least \$43 million. First Dallas was established in early 2000, accepted funds only from parties related to the Charles Wyly family, and was never opened to outside investors.<sup>967</sup> It invested untaxed offshore dollars in a variety of U.S. securities and private equity ventures in the United States.

**Offshore Dollars.** From its inception, First Dallas was financed primarily with dollars from offshore entities associated with Charles Wyly. First Dallas International Ltd., a Cayman corporation, functioned as the gateway for IOM corporations associated with Charles Wyly to supply millions of dollars. For example, in March 2000, Elysium wired \$6.25 million to First Dallas International for its initial capitalization.<sup>968</sup> In June 2000, Roaring Fork wired \$2 million.<sup>969</sup> In July, Elegance wired \$4 million.<sup>970</sup> By January 2002, Ms. Boucher reported to Mr. Wyly and his son-in-law, Donald Miller, that the "IOM trusts have contributed a total of \$29.2 Million to date, of which \$24.2 Million was cash and \$5M was investments."<sup>971</sup> Five months later, she reported that the total

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<sup>967</sup> First Dallas was formed after Charles relinquished his ownership and management role in Maverick. See, e.g., 3/2/00 email from Ms. Robertson to Ms. Boucher regarding "CW" (PSI\_ED00047852)(indicating Charles was "[r]eady to start a fund in the Cayman Islands. Wants to seed with \$5 million.")

<sup>968</sup> 3/29/00 email projecting cash needs for \$6.25 million (HST\_PSI000053); 3/30/00 wire transfer of \$6.25 million (Mizuho001160-61).

<sup>969</sup> 6/22/00 email from Ms. Boucher (MAV008079)("The protectors recommend that the trustees invest a further \$2M into First Dallas International"); 6/28/00 bank record (CC016678)(showing, on 6/28/00, Roaring Fork Ltd. wired \$2 million to First Dallas International).

<sup>970</sup> See 7/6/00 wire transfer (CC019562)(showing Elegance wired \$4 million to First Dallas International).

<sup>971</sup> 1/31/02 email from Ms. Boucher to Mr. Wyly and Mr. Miller (PSI00039590-91).



contributed by the IOM trusts had increased to \$32.2 million.<sup>972</sup> By the end of 2004, the combined offshore investment in First Dallas International exceeded \$43 million.<sup>973</sup>

This offshore funding was provided in varying amounts, every few months, in response to funding requests made by the Wyly family office, or in response to cash flow projections developed by Ms. Boucher, and the money was used to pay expenses, finance new investments, or satisfy capital calls made from existing investments.<sup>974</sup> After determining the amount needed by First Dallas in each instance, Ms. Boucher worked with the IOM trusts to identify available funds and arrange for one of the IOM corporations to wire the cash to First Dallas International.<sup>975</sup> First Dallas International then wired the offshore dollars to the United States, sending them either to First Dallas Ltd., which served as the fund's investment manager, or First Dallas Ventures Ltd., which functioned as a venture capital investment fund, both of which were Texas limited partnerships.<sup>976</sup>

First Dallas invested in a wide range of U.S. securities and private equity transactions in the United States.<sup>977</sup> All of the investments made

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<sup>972</sup> 5/10/02 email from Ms. Boucher to Mr. Wyly and Mr. Miller (PSI00109206-07) ("The IOM trusts have contributed a total of \$32.2 Million to date, of which \$27.2 Million was cash and \$5M was investments.").

<sup>973</sup> See, e.g., 12/31/04 financial statement for "Foreign Systems (CW)" (HST\_PSI006919) (showing combined "First Dallas International" investment from the Pitkin, Castle Creek International, Tyler and Red Mountain Trusts).

<sup>974</sup> See, e.g., 3/29/00 email projecting cash needs of \$6.25 million (HST\_PSI000053); 6/6/00 email requesting \$1.25 million (PSI00026310); 6/13/00 email requesting \$1 million (PSI\_ED00086616-17); 5/18/01 email requesting \$3 million (PSI\_ED00087333-34); 1/31/02 email projecting cash needs of \$3 million (PSI00039592); 5/10/02 email projecting cash needs of \$3 million (PSI00109206); 7/15/02 email requesting \$410,000 (PSI\_ED00010265-66); 12/3/02 email requesting about \$500,000 (PSI\_ED00005047); emails from July to September 2003 requesting over \$700,000 (PSI\_ED00005984-86); emails from January to February 2004 requesting funding (PSI\_ED00006339-41); 3/9/04 emails requesting about \$200,000 (PSI\_ED00013831-33); 7/23/04 email projecting immediate cash needs of \$500,000 to \$1 million and longer term cash needs totaling \$10 million (PSI\_ED00014804).

<sup>975</sup> See, e.g., 7/15/02 emails discussing where to obtain funding from IOM trusts (PSI\_ED00010265-66); 6/22/00 email identifying possible source of funding from Roaring Fork (MAV008079).

<sup>976</sup> See, e.g., bank records from 2000 to 2004, for First Dallas Ltd. (BA150280-387) and First Dallas Ventures Ltd. (BA PSI-W016499-620) (showing millions of dollars in deposits from First Dallas International).

<sup>977</sup> See, e.g., document entitled, "Lehman Brothers Realized Gains and Losses ... First Dallas International Ltd From 01-01-00 Through 09-09-01" (BA165457-58) (listing securities transactions involving over two dozen companies); 5/10/02 "Summary of FDI cash flows since inception" (PSI00109206-07) (listing private equity investments involving over one dozen companies).

by First Dallas appear to have been selected and managed by Charles Wyly and two of his sons-in-law, James Lincoln and Donald Miller. As a result, Charles Wyly was able to maintain control of the money he had placed offshore by having the untaxed funds sent to his own private investment fund, and then deciding where to further invest those funds.

The offshore dollars were also used for a second purpose. In addition to funding investments, some of the offshore dollars were used to pay management and performance fees charged by First Dallas Ltd.<sup>978</sup> First Dallas International paid, for example, an annual 2 percent management fee and supplied the funds used by First Dallas Venture to pay an annual 20 percent performance fee charged by First Dallas Ltd. The offshore entities' investments generated additional fees for the owners of First Dallas Ltd. – ultimately, Charles Wyly.

By providing in excess of \$43 million to First Dallas International to finance investments and generate fees in the United States, the IOM entities were, in effect, handing over direction of these offshore dollars to Charles Wyly and his family members so they could pursue their business interests.

**First Dallas Ownership.** The ownership structure of First Dallas was ultimately traceable to Charles Wyly and his family members. First Dallas consisted of three interlocking business entities, First Dallas International Ltd., a Cayman corporation; First Dallas Ventures Ltd., a Texas limited partnership, and First Dallas Ltd., another Texas limited partnership. First Dallas International supplied offshore funds to First Dallas Ventures, which functioned as a venture capital investment fund.<sup>979</sup> First Dallas Ltd. served as investment manager to both First Dallas International and First Dallas Ventures.<sup>980</sup> First Dallas Ltd. charged a fee for its services, requiring First Dallas International to pay an annual fee equal to two percent of the assets being invested, and

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<sup>978</sup> See, e.g., 10/15/04 email from Irish Trust Company to Mr. Lincoln (PSI\_ED00009002)(indicating about \$110,000 in offshore dollars had been wired to pay management fees).

<sup>979</sup> See, e.g., 6/6/00 emails among Ms. Boucher, Ms. Hennington, and others (PSI00026310)(“FDI funds FDV, and FDV makes the investments. First Dallas, Ltd (FDL) acts as the investment advisor to both FDV and FDI.”).

<sup>980</sup> *Id.*, see also, e.g., 4/1/00 “Investment Management Agreement” (BA045267-77)(showing First Dallas Ltd. agreed to serve as investment manager for First Dallas International).

requiring First Dallas Ventures to pay a 20 percent annual performance fee.<sup>981</sup>

The Cayman corporation, First Dallas International, was apparently owned by the four IOM corporations that supplied its funding.<sup>982</sup> All four of these corporations were owned by IOM trusts that benefited the Charles Wyly family. The investment manager, First Dallas Ltd., was owned by its U.S. partners.<sup>983</sup> Its sole general partner was First Dallas GP LLC, a Texas limited liability corporation whose manager was Charles Wyly.<sup>984</sup> Its sole limited partner was Charles Wyly himself. The third entity, First Dallas Ventures, was owned by the other two: its sole general partner was First Dallas Ltd., and its sole limited partner was First Dallas International.<sup>985</sup>

**First Dallas Management.** Charles Wyly and his family members directed the First Dallas operations. Mr. Wyly was both the manager of the general partner and the sole limited partner of First Dallas Ltd.<sup>986</sup> The documents show that Mr. Wyly repeatedly made specific investment decisions for both First Dallas International and First Dallas Ventures.<sup>987</sup>

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<sup>981</sup> See, e.g., 6/20/00 emails from Ms. Boucher to Ms. Hennington and others (PSI\_ED00004574-75, at 74)(discussing fees).

<sup>982</sup> See 5/28/02 emails between Louis Schaufele of Bank of America and Ms. Hennington (PSI\_ED00006917)(Mr. Schaufele wrote: "Could you tell ... me whom the owners of 1<sup>st</sup> Dallas, I assume that it is IOM corps." Ms. Hennington responded: "[T]he companies are: Roaring Creek Limited, Roaring Fork Limited, Elysium Limited, Elegance Limited.").

<sup>983</sup> See 2/7/00 "First Dallas, Ltd. Limited Partnership Agreement" (BA045257-66).

<sup>984</sup> *Id.* See also MOPSI008564-67 (indicating FDG LLC is a single member LLC owned by Charles Wyly).

<sup>985</sup> See 3/10/00 "First Dallas Ventures, Ltd. Limited Partnership Agreement" (PSI\_ED00028561-70).

<sup>986</sup> See, e.g., "First Dallas Ltd. Limited Partnership Agreement" (BA045257-66) in which Charles Wyly signs the agreement twice, on behalf of both the general and limited partners. See also, e.g., 6/13/00 email from Mr. Lincoln to Ms. Hennington and others on "FDL Items" (PSI\_ED00086616-17)(indicating that First Dallas Ltd. will charge a management fee to First Dallas International and stating: "CJW would like for this to have started on April 1. So we need to invoice for the last quarter and ... upcoming quarter.").

<sup>987</sup> See, e.g., 3/29/00 email from Ms. Boucher to Charles Wyly, Mr. Miller, and others (HST\_PSI000053)(asking Mr. Wyly for information about particular investments to be made by First Dallas International and First Dallas Ventures, and containing his handwritten notations on specific amounts of funds to be invested in nine different companies); 10/16/00 memorandum from Ms. Boucher to Ms. Robertson, Mr. French, and others (MAV008220-21)("Charles has a planned investment in a new ... venture called 'Fresh Direct.' ... Charles would like to commit \$1Million through First Dallas International."); 1/31/02 email from Ms. Boucher to Charles Wyly, Mr. Miller, and others (PSI00039592)(Ms. Boucher wrote: "I have estimated that the protectors should recommend an additional investment of \$3Million dollars into First Dallas International." Mr. Wyly's handwritten notation responded: "Yes."); similar email dated 5/10/02 (PSI00109206)(recommending another \$3 million for First Dallas International to which

In addition, his sons-in-law, James Lincoln and Donald Miller, played key management roles in the First Dallas business venture. In June 2000, Ms. Boucher wrote to Ms. Hennington: "We look at FDV as a 'venture capital fund' and Donnie/Jim are managing it, making the investment decisions."<sup>988</sup> The documents indicate that, from 2000 until 2004, both men were involved with First Dallas on a daily basis, but that Mr. Wyly also continued to participate in management decisions, apparently in a senior role.<sup>989</sup>

In the First Dallas business venture, the offshore trustees supplied funds when asked and provided a total of \$43 million, enabling Charles Wyly and his family members to direct use of these funds to pursue their business interests in the United States. Using offshore dollars to generate management fees charged by First Dallas Ltd. also provided a way to transfer these dollars directly into the United States for the Wyllys' personal use.

### **(c) Investing Offshore Dollars in Offshore Insurance**

In addition to providing offshore dollars to hedge funds and a private investment fund which enabled Wyly-controlled companies to decide when and how to further invest the money, the Wyly-related offshore entities directed millions of offshore dollars to specific business ventures favored by the Wyly family. One such business was an offshore insurance venture, the Scottish Annuity Company (Cayman) Ltd. (SAC). Investing their offshore assets in this offshore insurance venture produced multiple benefits for the Wyllys, including providing another avenue of direction over the offshore funds, a means to boost

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Mr. Wyly again responded "yes"; 6/20/02 fax from Irish Trust Company to Charles Wyly (PSI00109208-14)(conveying financial information about First Dallas International); 7/15/02 email from Ms. Hennington to Ms. Boucher and others (PSI\_ED00010265-66)("Based on the last e-mail on 5/29 Charles approved \$210,000 per month for Transfinity and \$200,000 per month for Seranin. ... Michelle – you may want ... to have another discussion with Donnie and Charles on the remaining funding."); 11/26/02 email from Ms. Hennington to Andrea Westbrook and others (PSI\_ED00011228)("I just talked to Jim and Charles and Donnie have approved an additional funding for RLX.").

<sup>988</sup> 6/20/00 email from Ms. Boucher to Ms. Hennington (PSI\_ED00004574-75).

<sup>989</sup> Sec, e.g., 6/13/00 email from Mr. Lincoln to Ms. Hennington (PSI\_ED00086616-17)("Make sure that FDL's financials are up to date. ... We will be reporting to CJW on standing as of the 2<sup>nd</sup> Qtr."); 10/16/00 memorandum from Ms. Boucher to Ms. Robertson, Mr. French, and others (MAV008220-21)("This is the venture cap fund that Donnie and Jim are managing. Charles has authorized investments up to \$10Million at this time. ... Jim and Donnie both appear to be really enjoying this venture."); 9/17/03 letter from Charles Wyly to Mr. Lincoln (HST\_PSI036156)(using his personal stationery, Mr. Wyly awarded Mr. Lincoln a First Dallas bonus for selling certain assets: "First Dallas awards you a \$10,000 bonus .... While the amounts involved in this transaction and this bonus are not large, they are symbolically important.").

other business ventures that interested them, and purportedly adding another layer of protection against U.S. taxes in the event that the underlying offshore trusts were deemed subject to U.S. taxation. Altogether, the Wyly-related offshore entities appear to have provided more than \$20 million in loans and equity contributions to SAC, as well as about \$14 million in annuity assets.

**Ownership and Management.** In 1994, Sam and Charles Wyly and the Wyly family legal counsel, Michael French, established a Cayman holding company called Scottish Holdings Ltd. This company was primarily owned by three offshore trusts. The Bessie Trust, associated with Sam Wyly, owned 38 percent, while the Tyler Trust, associated with Charles Wyly, owned 19 percent, for a combined total of 57 percent. The South Madison Trust, an Isle of Man trust associated with Mr. French, owned 38 percent. The final five percent was split among three individuals or offshore entities associated with them: Ms. Boucher, Ms. Robertson, and Lee Ainslie, head of Maverick investments.<sup>990</sup>

Scottish Holdings immediately established a wholly-owned subsidiary, SAC, which acquired a "Class B" or offshore insurer's license allowing it to sell insurance and annuity policies to non-Cayman residents.<sup>991</sup> For its first four years of existence, from 1994 to 1998, SAC had two officers, Mr. French and Ms. Boucher.<sup>992</sup> Sam Wyly, who was not an officer, was nevertheless active in managing the company.<sup>993</sup>

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<sup>990</sup> "Scottish Re: Presentation to the Permanent Subcommittee on Investigations" (4/18/00) at 50; undated document (likely authored in 1997) entitled, "Scottish Holdings Recapitalization" (PSI\_ED00044949).

<sup>991</sup> 1999 annual report filed with the SEC by Scottish Annuity & Life Holdings, Ltd. at 35.

<sup>992</sup> Mr. French served as SAC's chief executive officer throughout this period. "Scottish Re: Presentation to the Permanent Subcommittee on Investigations" (4/18/00) at 48; 6/9/98 minutes of Scottish Life Holdings Ltd. first corporate meeting (SR0000754-57). See also undated document (probably prepared in 1997) entitled, "Mike's Deal" (PSI\_ED00044931) (stating without further explanation: "MCF is CEO of SAC. This may not be able to be formalized because of tax issues."). Ms. Boucher served as SAC's secretary and chief financial officer for five months, before moving to the Irish Trust Company. SAC's directors were Mr. French; three Queensgate employees; and two persons associated with the Isle of Man, Ronald Buchanan and Keith King. "Scottish Re: Presentation to the Permanent Subcommittee on Investigations" (4/18/00) at 48. Mr. Buchanan was then managing director of Lorne House which served as trustee of the Bessie and Tyler Trusts that owned a majority interest in Scottish Holdings Ltd. Mr. King was also a director of Lorne House and served as the grantor of the Bessie and Tyler Trusts.

<sup>993</sup> See, e.g., 3/1/95 fax from Mr. Buchanan to Mr. French, in part, complaining about the management of SAC (PSI00120863-64)(Mr. Buchanan wrote: "Lorne House Trust, as trustee, is fighting the IRS in Northern California where the IRS is contending that a corporation owned by the (foreign) trust is the mere 'alter ego' of the Settlor, even though I can assure you that the

**Offshore Dollars.** From its inception, Wyly-related offshore entities contributed or lent millions of offshore dollars and assets to capitalize SAC, strengthen its balance sheet, and purchase annuity policies from the company. Wyly-related offshore trusts provided, for example, the initial financing that got the offshore insurance venture underway. In 1994, two IOM trusts, the Bulldog Trust associated with Sam Wyly and the Pitkin Trust associated with Charles Wyly, issued a \$300,000 loan to SAC's parent, Scottish Holdings Ltd.<sup>994</sup> The funds were apparently provided by Bulldog's subsidiary Morehouse, which provided \$200,000, and Pitkin's subsidiary Roaring Creek, which provided \$100,000.<sup>995</sup> In 1995, both trusts issued a second loan for \$200,000.<sup>996</sup> On both occasions, the trusts provided the financing in response to a recommendation made by the trust protectors, Mr. French and Ms. Robertson, each of whom told the Subcommittee that they provided the recommendations on instruction from Sam Wyly.

In 1996, two more Wyly-related offshore trusts, the Bessie and Tyler Trusts, apparently assumed the \$500,000 in loans<sup>997</sup> and also provided Scottish Holdings with another \$720,000.<sup>998</sup> Again, the trusts acted on the basis of a recommendation from the trust protectors who told the Subcommittee that they would have acted on the instruction of Sam Wyly. In 1997, the two trusts apparently contributed \$2 million in additional capital.<sup>999</sup>

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settlor in question has been far more willing to leave us in genuine control – a fact which promises to win us the case – than S. appears to be.”). “S.” appears to refer to Sam Wyly.

<sup>994</sup> See 3/21/95 fax from Mr. French and Ms. Robertson to Ronald Buchanan of Lorne House Trust (PSI00121777-78); Subcommittee interview of Mr. French (4/21/06).

<sup>995</sup> 12/18/95 fax from Ms. Boucher to Lorne House (PSI00137814-17).

<sup>996</sup> *Id.*

<sup>997</sup> See, e.g., 4/3/96 fax from Ms. Boucher to Barbara Wade of Lorne House (PSI-WYBR00370)(explaining the transactions needed for the Bessie and Tyler Trusts to assume the \$500,000 in loans from the Bulldog and Pitkin trusts). Both loans were apparently repaid around the same time. See, e.g., 8/22/96 fax from Ms. Boucher to Ms. Robertson (PSI00087607)(stating loans were repaid as of 3/31/96, but interest owing on them, \$182,000, remained outstanding).

<sup>998</sup> See 12/23/96 fax from Ms. Robertson to Mr. Buchanan of Lorne House (PSI00121018)(recommending that \$480,000 be contributed by the Bessie Trust through its wholly owned corporation, Fugue, later renamed Audubon Assets, and \$240,000 be contributed by the Tyler Trust through its wholly owned corporation, Soulicana). It is possible that the Tyler Trust lent additional funds to Scottish as well. See undated document entitled “Scottish Annuity” (PSI\_ED00044929)(listing “cash investments” from Tyler Trust on 6/7/94, 3/29/95, 11/1/95, and 12/31/96 totaling \$348,692).

<sup>999</sup> Undated document entitled, “Scottish Holdings Recapitalization,” probably prepared in 1997 (PSI\_ED00044949)(“Tyler needs to contribute the balance due (\$666,600) of the \$2m additional capital. Bessie contribution of \$1,333,4000 has been received.”).

In addition to providing more than \$3.2 million in financing during the venture's early years, the Wyly-related offshore entities apparently "loaned" the business venture millions of dollars worth of shares in Maverick's offshore fund, so that these shares could be listed on SAC's balance sheet as part of its equity. In late 1995 or early 1996, for example, the offshore trusts "loaned" Scottish Holdings Ltd. a number of Maverick Fund LDC shares that collectively were worth about \$2 million.<sup>1000</sup> By 1997, the amount of "loaned" Maverick shares had increased to \$3.5 million.<sup>1001</sup> In 1998, another \$20 million in Maverick shares were apparently "loaned" to the insurance venture, for a combined total of about \$23.5 million.<sup>1002</sup> In each instance, after the shares were "loaned" to Scottish Holdings, Scottish Holdings assigned the shares to its subsidiary, SAC, which then apparently included them on its balance sheet as part of its "equity."

As Mr. French wrote at one point, the purpose of lending these shares was "to boost SAC equity" and provide it with a "competitive advantage" over other companies seeking to sell variable annuity products to high net worth individuals.<sup>1003</sup> Officials of Scottish Re, the company that acquired SAC in 1999,<sup>1004</sup> told the Subcommittee that the

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<sup>1000</sup> See, e.g., 8/22/96 fax from Ms. Boucher to Ms. Robertson (PSI00087607-10); 8/29/96 fax from Ms. Robertson to Sam, Charles and Evan Wyly and Don Miller (PSI00087605-06) ("A reminder, that the Wyly's loaned \$2,008,013 of Maverick Fund LDC to Scottish Holdings [and] Scottish Holdings contributed the Fund investment to Scottish Annuity as APIC."); 11/7/97 "SAC 98 Plan" (PSI\_ED00044927-28) ("Holdings has borrowed shares of Maverick Fund ... from Bessie/Tyler or related trusts."); Subcommittee interview of Mr. French (4/21/06).

<sup>1001</sup> See 11/7/97 "SAC 98 Plan" (PSI\_ED00044927-28); Subcommittee interview of Mr. French (4/21/06).

<sup>1002</sup> See 11/7/97 "SAC 98 Plan" (PSI\_ED00044927-28); undated document (likely authored in 1997) entitled, "Scottish Holdings Recapitalization" (PSI\_ED00044949) ("Existing loan of shares of Maverick Fund from Bulldog and Pitkin to Holdings should be increased by shares having a current value of an additional \$20 million. These shares are to be contributed by Holdings to SAC as additional equity capital. Loan is a demand loan and must be satisfied by return of the shares. Like the existing arrangement, this will be equity on SAC's books and a loan payable on Holding's books."); Subcommittee interview of Mr. French (4/21/06).

<sup>1003</sup> 11/7/97 "SAC 98 Plan," authored by Mr. French (PSI\_ED00044927-28) ("It is proposed that another \$20 million of Fund shares be loaned to Holdings and contributed downstream to SAC to boost SAC equity to \$25 million. Since SAC engages only in the variable annuity business, there is no need for any of this capital from an operating standpoint. However, a balance sheet with \$25 million of equity will provide a significant competitive advantage over anyone else engaged in this type of business offshore, and possibly onshore.").

<sup>1004</sup> See, e.g., 8/18/00 email from Paul Goldean to Scott Willkomm (SCREPSI014948) ("Scottish Holdings, Ltd. (a company owned by the Wyly's and Mike French) sold all 250,000 shares of Scottish Annuity Company (Cayman) Ltd. to Scottish Annuity & Life Holdings, Ltd. for \$11,562,161.84 .... on 12/31/99."). Scottish Re Group was incorporated on 5/12/98, under the name Scottish Annuity & Life Holdings, Ltd., and went public in November 1998. It briefly changed its name to Scottish Life Holdings Ltd. on 6/4/98, but returned to Scottish Annuity &

shares had helped to “build the balance sheet” and show that Scottish had the assets necessary to operate its business.<sup>1005</sup> Mr. French also wrote: “Since SAC is wholly owned by Holdings, the Fund shares can be withdrawn at any time and returned to the lenders, without documenting any obligation on SAC’s books.”<sup>1006</sup>

Scottish Re’s representatives told the Subcommittee that they had never seen this type of “loan” before, in which a hedge fund’s shares were “lent” but not contributed to a company and listed as an equity asset. Maverick’s representatives told the Subcommittee that they also found the “loan” unusual, but noted that hedge funds often allowed clients to assign their ownership interests in a hedge fund to a third party, such as, for example, a bank considering providing the client with financing.

In 1999, the “loan” of the Maverick shares came to an end, when SAC was formally purchased by Scottish Re for \$11.5 million.<sup>1007</sup> Prior to the closing, SAC returned \$23.6 million in capital to Scottish Holdings Ltd. – this returned “capital” apparently consisted of the Maverick shares.<sup>1008</sup>

**SAC Annuities.** In addition to investing in SAC itself, Wyly-related offshore entities provided at least \$14 million in offshore funds to purchase SAC annuity policies. SAC allowed its annuity policyholders to select who would invest and manage their annuity assets. The Wyly-related offshore entities initially directed that the funds in their annuities be placed with the Wyly-related hedge fund, Maverick; later, some moved funds to the second Wyly-related hedge fund, Ranger, or to other investment funds. By investing offshore dollars in SAC annuity policies and selecting Maverick or Ranger as the

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Life Holdings, Ltd. on 9/9/98. The company took its present name, Scottish Re Group Ltd., on 8/28/03. 7/5/06 letter from the legal counsel for Scottish Re Group to the Subcommittee, at 2.

<sup>1005</sup> Subcommittee interview of Scottish Re (4/18/06).

<sup>1006</sup> 11/7/97 “SAC 98 Plan,” authored by Mr. French (PSI\_ED00044927-28).

<sup>1007</sup> SCREPSI014948.

<sup>1008</sup> “Scottish Re: Presentation to the Permanent Subcommittee on Investigations” (4/18/00) at 51; Subcommittee interviews of Scottish Re (4/18/06) and Mr. French (4/21/06). See also 12/31/99 Scottish Holdings Ltd. Balance Sheet (PSI00101644)(listing “Loans payable (Maverick shares)”). Scottish Re purchased SAC from its parent, Scottish Holdings Ltd., which after receiving the \$11.5 million, issued a distribution to its shareholders, including about \$5.2 million to Audubon Assets, the corporation associated with Sam Wyly; \$2.6 million to Souleiana, the corporation associated with Charles Wyly; and \$3.8 million to Arakan Ltd., a corporation associated with Mr. French. See 1/20/00 “Scottish Holdings Cash reconciliation” (PS00101646).



investment manager of those annuity assets, the offshore trusts had, in effect, enabled the Wylys to direct the investment of those funds.

During SAC's early years, two Wyly-related offshore trusts were among its largest policyholders.<sup>1009</sup> In 1994, the Lake Providence International Trust, which was established by Sam Wyly, purchased a SAC annuity policy, apparently contributed about \$8.2 million in annuity assets, and selected Maverick as the investment manager for these funds.<sup>1010</sup> The Castle Creek International Trust, an IOM trust established by Charles Wyly, took similar action, purchasing a SAC annuity policy, apparently contributing about \$5.5 million in annuity assets, and also naming Maverick as the investment manager of those assets.<sup>1011</sup> Ms. Boucher later described these policies as "originally acquired, in part, to provide seed capital to Scottish's book of business."<sup>1012</sup>

The annuity assets, invested at Maverick, apparently grew rapidly in value. By September 2000, six years later, the Wylys valued the Lake Providence assets at about \$45 million and the Castle Creek annuity assets at about \$30 million.<sup>1013</sup> In December 2000, Sam Wyly apparently instructed Ms. Boucher to withdraw the assets associated with the SAC policies.<sup>1014</sup> After Scottish Re offered to lower its fees related to these

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<sup>1009</sup> Subcommittee interview of Mr. French (4/21/06).

<sup>1010</sup> See, e.g., 10/31/99 internal Wyly financial report for Lake Providence International Trust (PSI00109903)(showing the "book" value of "Scottish A. Policy" at about \$8.2 million and the fair market value at over \$36 million); 9/30/00 internal Wyly financial report for Lake Providence International Trust (PSI00071741)(showing the "book" value at about \$8.2 million and the fair market value at over \$45 million). The Subcommittee asked Scottish Re to confirm these figures and other details about the policy; Scottish Re said that it could not get permission from the client, presumably Lake Providence International Trust, to do so.

<sup>1011</sup> See, e.g., 10/31/99 internal Wyly financial report for Castle Creek International Trust (PSI00109912)(showing the "book" value of "Scottish Annuity Policy" at about \$5.5 million); 9/30/00 internal Wyly financial report for Castle Creek International Trust (PSI00071748)(showing the same "book" value). The Subcommittee asked Scottish Re to confirm these figures and other details about the policy; Scottish Re said that it could not get permission from the client, presumably Castle Creek International Trust, to do so.

<sup>1012</sup> 8/31/01 email from Ms. Boucher to Sam Wyly and others (PSI\_ED00064869-74).

<sup>1013</sup> See, e.g., 9/30/00 internal Wyly financial report for Lake Providence International Trust (PSI00071741); 9/30/00 internal Wyly financial report for Castle Creek International Trust (PSI00071748).

<sup>1014</sup> See, e.g., 12/1/00 email from Ms. Boucher to Ms. Robertson on "SAC annuity policies" (PSI\_ED00044520-21)("SW told us to go ahead and have the trustees make this withdrawal. ... SW also indicated that this is in keeping with the severing of the relationship."); 12/4/00 email from Ms. Boucher to Evan Wyly on "lake providence/castle creek - scottish annuity policy withdrawals" (MAV012080)("The trustees have not had satisfactory response from Scottish with trying to give effect to this transaction. ... I expect you and/or Sam, and maybe even Charles may hear from him [Mr. French]. ... I think that Scottish will want to

annuities, the instructions were withdrawn and the SAC policies continued.<sup>1015</sup> Also in 2000, the Lake Providence trust was merged into a newly created IOM trust called “Bulldog II,” which was also associated with Sam Wyly. The Castle Creek trust was similarly merged into a new IOM trust called “Pitkin II.” During the time these new trusts were in existence, the SAC policyholders were Bulldog II and Pitkin II.<sup>1016</sup>

In 2001, Sam Wyly apparently decided to withdraw \$40 million from the Lake Providence SAC policy, with the initial \$30 million to be withdrawn by September 1, and another \$10 million by October 1.<sup>1017</sup> At the time, the funds were invested with Maverick, and the plan was for the offshore trust to redeem the Maverick investment “to raise cash” to be used “for various other purposes, such as ... investing in Ranger, Green Mountain and funding commitments to Red River and Winston Thayer and funding construction at Two Mile Ranch.”<sup>1018</sup> All of the mentioned uses for the cash involved businesses or real estate of interest to the Wyls and indicate that Sam Wyly was directing the withdrawal of the Lake Providence annuity assets to generate cash for other businesses and properties of interest to him.

When the withdrawal request was communicated to SAC, Mr. French warned the Bulldog II trustee, then IFG, that “surrender[ing] a portion of the Bulldog annuity ... is not a wise move.”<sup>1019</sup> Mr. French

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negotiate to keep the policies in place through 12/31 for year end numbers. I think it is reasonable for the trustees to agree to this, provided SAC agrees to do a like-kind distribution and transfer the share of Maverick as opposed to having to redeem funds from Maverick & reinvest.”).

<sup>1015</sup> See, e.g., 12/14/00 email from Amy Castillo to Irish Trust on “Scottish Redemptions” (PSI\_ED00044136)(asking about “SAC P136-014 Castle Creek” and “SAC P136-015 Lake Providence” and describing the policies as “Wyly related”); 8/31/01 email from Ms. Boucher to Sam Wyly and others (PSI\_ED00064869-74); 11/15/01 email from Scott Willkomm, Scottish Re CEO, to Ms. Boucher (MAV012715-17)(“Sam had already agreed earlier this year not to redeem the annuities ... when we agreed to substantially lower the M&E fees.”).

<sup>1016</sup> Four years later, in 2004, both the Bulldog II and Pitkin II trust would be voided by their trustees, allegedly due to defects in how the trusts were established. See Appendix 1 and Report section on Directing Trust Assets. The trustees would also reconstitute the Lake Providence and Castle Creek International Trusts, and deem that their assets were returned to their custody as if they had never left, presumably including the SAC policies.

<sup>1017</sup> 8/31/01 email from Ms. Boucher to Sam Wyly and others (PSI\_ED00064869-74). See also 12/31/01 internal Wyly financial report on “Global Sam Family” (PSI00078955) (showing that a “Scottish Policy” in Maverick had a fair market value at that time of about \$53.5 million).

<sup>1018</sup> 8/31/01 email from Ms. Boucher to Sam Wyly and others (PSI\_ED00064869-74).

<sup>1019</sup> *Id.* at PSI\_ED00064871.

also warned Ms. Boucher of “grave negative tax implications,” explaining:

“The annuity exists because there is always a risk that the trust in question will be classified by US tax authorities as a grantor trust, thus subjecting the settlor to taxation on all of the trust income. ... Based on the history of this annuity and the amount of gain deferred, the entire amount proposed to be withdrawn would be classified as ordinary income for U.S. income tax purposes. If there is any action by the authorities in the next six years to classify the trust as a grantor trust, then the settlor will be subjected to a claim for taxes equal to 40% of the amount withdrawn plus interests and, possibly, penalties. ... Once a surrender takes place, the tax problem thus created cannot be cured, and will be there for the next six years. ... [M]y personal opinion is that it is a grave and unnecessary mistake.”<sup>1020</sup>

Ms. Boucher responded that “as was customary during your term of service as a protector to these trusts, legal counsel was in fact consulted with regard to this matter ... [and] this withdrawal [is] consistent with the advice obtained.”<sup>1021</sup> Ms. Boucher also sent a lengthy email to Sam Wyly and others, explaining the issues, conveying Mr. French’s warning, and stating “we need a quick reply” on whether to withdraw the \$40 million.<sup>1022</sup>

These email exchanges raise several issues. First, they demonstrate that Sam and Charles Wyly were the key decisionmakers for the annuity policies held in the name of the offshore trusts. In December 2000, for example, Ms. Boucher asked Sam Wyly, not the relevant offshore trustee, for a quick decision on withdrawing the \$40 million from the annuity policy. Second, the emails show a concern that the Wyly-related offshore trusts might be deemed by U.S. tax authorities as “grantor trusts” whose income would be attributed to Sam Wyly, and the annuity policies were purchased to provide added protection against potential U.S. tax liability. Finally, the emails show that the Wylys and their representatives considered the millions of dollars of offshore funds placed in the annuity policies as available, if redeemed, to fund other business ventures and personal properties of interest to the Wylys.

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<sup>1020</sup> Id. at PSI\_ED00064872-73.

<sup>1021</sup> Id. at PSI\_ED00064873.

<sup>1022</sup> Id. at PSI\_ED00064869 (subject line of “URGENT email for Sam, we need a quick reply on this – thanks!”).

The documents suggest that, in the end, the \$40 million was not withdrawn from the Lake Providence annuity policy in 2001. The funds appear to have remained in the SAC policy, invested at Maverick, until 2004, when the funds were moved to the “LifeInvest Opportunity Fund,” an insurance-dedicated fund managed by Bermuda-based Tremont Advisers.<sup>1023</sup> By the end of 2004, the SAC annuity assets at the Lifeinvest Opportunity Fund were valued at about \$61.6 million.<sup>1024</sup> In addition, internal Wyly financial records show that, by the end of 2004, the Castle Creek International Trust held four SAC policies with assets totaling over \$43 million, of which about \$14 million was managed by Maverick and another \$19 million was managed by Ranger.<sup>1025</sup>

**IPO Stock Purchases.** In addition to the offshore dollars and assets contributed to SAC and SAC annuity policies, Wyly-related offshore entities provided capital for the initial public offering (IPO) of Scottish Annuity & Life Holdings, Ltd., the company later known as Scottish Re. As Scottish prepared for this initial public offering, the IPO vehicle, Scottish Annuity & Life Holdings Ltd., issued millions of shares and warrants to “related parties,” most of which were offshore entities associated with the Wyllys and Mr. French.<sup>1026</sup> In June and October 1998 (prior to the company’s initial public offering in November 1998), Scottish issued millions of shares and Class A warrants to “related parties.” Among the largest purchasers were Audubon Assets, an IOM corporation associated with Sam Wyly, which obtained over 470,000 shares and 1 million warrants; Soulieana, an IOM corporation associated with Charles Wyly, which obtained over 230,000 shares and 550,000 warrants; the Bessie Trust, an IOM trust associated with Sam Wyly,

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<sup>1023</sup> Internal Wyly financial reports indicate that about \$54 million stayed in the SAC policy until 2004, when all but about \$14 million appears to have been withdrawn. See, e.g., 12/31/01 report on “Global Sam Family” (PSI00078955)(showing that a “Scottish Policy” in Maverick with a fair market value (FMV) of \$53.5 million); 12/31/02 report on “Global Family (SW & CW)” (PSI\_ED00092539)(showing that a “Scottish Policy” in Maverick with a FMV of \$54.9 million); 9/30/03 report on “Global Family (SW & CW)” (PSI\_ED00093878)(showing that a “Scottish Policy” in Maverick with a FMV of \$54.4 million); 12/31/04 report on “Global Family (SW & CW)” (PSI\_ED00095229)(showing no investment related to Sam Wyly in a Scottish Policy at Maverick, but \$61.6 million at Lifeinvest Opportunity Fund). See also 5/26/06 letter from Scottish Re’s legal counsel to the Subcommittee, at 2.

<sup>1024</sup> See, e.g., 12/31/04 internal Wyly financial report entitled, “Family Offshore” (HST\_PSI006889)(under entry for “SW Foreign Total Family FMV”); 12/31/04 internal Wyly financial report for Lake Providence (HST\_PSI006906).

<sup>1025</sup> See, e.g., 12/31/04 internal Wyly financial report entitled, “Family Offshore” (HST\_PSI006889)(under entry for “CW Foreign Total Family FMV”); 12/31/04 report on “Global Family (SW & CW)” (PSI\_ED00095229).

<sup>1026</sup> See, e.g., 1999 Scottish Annuity & Life Holdings Annual Report; “Scottish Re: Presentation to the Permanent Subcommittee on Investigations” (4/18/00) at 54; undated chart entitled “Scottish Annuity & Life Holdings, Ltd. Private Placement Transactions” (SCREPSI000423-25)(listing shares and warrants issued in June and October 1998).

which obtained 152,000 shares; and the Tyler Trust, an IOM trust associated with Charles Wyly, which obtained 76,000 shares.<sup>1027</sup> Another 1.5 million shares were sold to Scottish Holdings Ltd., then owned in part by Wyly-related offshore entities, for \$500,000.<sup>1028</sup> Another 460,000 shares were purchased by one of the Maverick offshore funds, Maverick Fund LDC. It is unclear how much the Wyly-related offshore entities paid in total for these shares and warrants.<sup>1029</sup> Mr. French and his IOM trust, South Madison, also received substantial shares, options, and warrants.

During the initial public offering itself, about 16.7 million shares were sold to the investing public.<sup>1030</sup> Maverick used \$10 million to buy over 700,000 shares and 200,000 warrants from Scottish.<sup>1031</sup> Over the next three months, Maverick spent another \$11 million in open market transactions to buy an additional 979,000 shares, for a combined total of \$21 million. By April 2000, Sam and Charles Wyly owned about 9.5 percent of the company directly and an additional 9.1 percent was held by Maverick.<sup>1032</sup> Mr. French became Chairman of the Board and Chief Executive Officer of Scottish Annuity & Life Holdings. From 1998 to 2000, Sam and Charles Wyly served as directors of that company, as did David Matthews, Sam Wyly's son-in-law, and Duke Buchan, then a managing director of Maverick Capital Ltd. These five individuals then formed a majority of the eight-person board.

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<sup>1027</sup> See "Scottish Re: Presentation to the Permanent Subcommittee on Investigations" (4/18/00) at 54; undated chart entitled "Scottish Annuity & Life Holdings, Ltd. Private Placement Transactions" (SCREPSI000423-25)(listing shares and warrants issued in June and October 1998).

<sup>1028</sup> 3/30/99 10-K filed by Scottish Annuity & Life Holdings, at 11.

<sup>1029</sup> See, e.g., 3/30/99 10-K filed by Scottish Annuity & Life Holdings, at 11-15 (listing securities sales in October 1998 to Audubon, Souleiana, Maverick Fund LDC); 1999 Scottish Annuity & Life Holdings Annual Report, at 45 (showing Class A warrants to purchase a total of 1,550,000 shares at \$15 per share were issued to related parties in June 1998, in exchange for consideration totaling \$100,000; the report states: "The Class A warrants were issued ... at the initial stage of the development of our business plan when the feasibility of proceeding with the offering was uncertain. The consideration paid for the Class A warrants was determined to be fair value in the judgement of management in light of such uncertainty."); 6/17/98 fax from Ms. Boucher to Evan Wyly (SR0000752)(indicating 750,000 warrants to be purchased by the Bessie and Tyler Trusts would cost about \$48,000).

<sup>1030</sup> 1999 annual report filed with the SEC by Scottish Annuity & Life Holdings Ltd. at 45.

<sup>1031</sup> 3/23/06 Maverick letter to the Subcommittee, at 3. Presumably, all of these client funds were associated with the Wylys. See also "Scottish Re: Presentation to the Permanent Subcommittee on Investigations" (4/18/00) at 54.

<sup>1032</sup> See, e.g., 5/1/00 DEF 14A filed with the SEC by Scottish Annuity & Life Holdings, at 7; 12/31/99 Schedule 13G/A filed with the SEC by Maverick Capital Ltd. relating to Scottish Annuity & Life Holdings.

In 2000, Mr. French and the Wyls severed their business relationships.<sup>1033</sup> Mr. French continued as Chairman of the Board and Chief Executive of the Scottish Re Group, while resigning his positions as trust protector of the Wyly-related offshore trusts, director of Michaels Stores, and legal counsel to the Wyly family. He also gave up his ownership interest in Maverick. Sam and Charles Wyly had already resigned from the Scottish Re Group board earlier in 2000, and they stopped participating in Scottish Re's management.

After the Wyls decided to withdraw from Scottish, the Wyly-related offshore entities began to sell their shares. Ms. Boucher kept Sam and Evan Wyly informed about these sales.<sup>1034</sup> In addition, by June 2001, Maverick sold virtually all of the Scottish shares it had purchased. During May 2003, Maverick exercised its clients' Scottish warrants at an aggregate exercise price of \$3 million and sold the shares for about \$3.8 million. By the end of 2004, offshore entities associated with Sam Wyly retained warrants to buy Scottish stock valued at about \$13.2 million, while offshore entities associated with Charles Wyly retained warrants to buy Scottish stock valued at about \$6.6 million, for a combined total of about \$19.8 million.<sup>1035</sup>

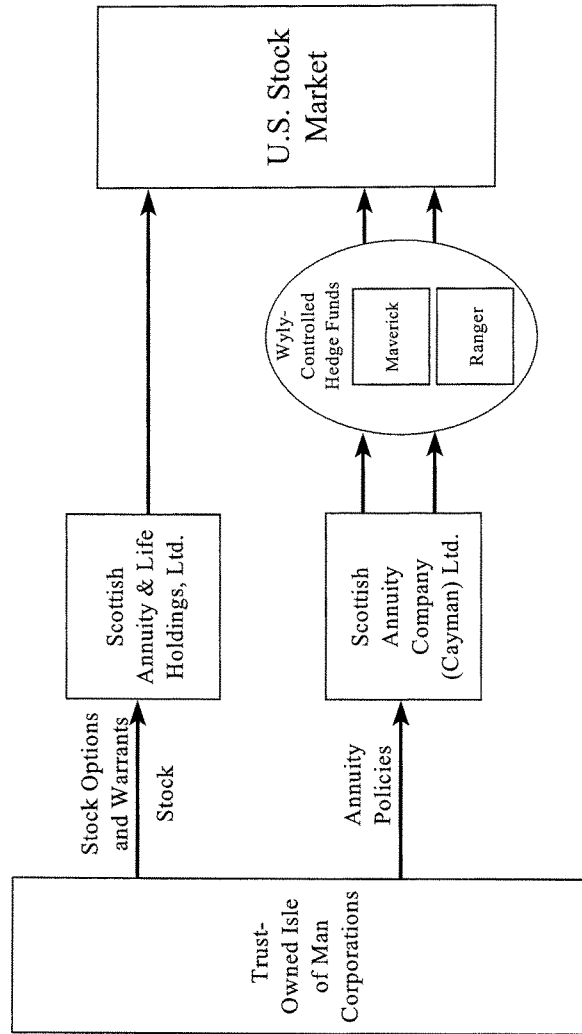
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<sup>1033</sup> The Wyls and Mr. French signed an agreement to "sever all direct and indirect business and professional relationships between French and the Wyls, to resolve all claims that French has asserted against the Wyls, and to forever end all disputes between French and the Wyls." See 12/21/00 "Settlement Agreement and Mutual Release" (F000282-89). The agreement did not explicitly mention Scottish Re.

<sup>1034</sup> See, e.g., 5/23/01 email from Ms. Boucher to Sam and Evan Wyly (PSI00088927).

<sup>1035</sup> See 12/31/04 internal Wyly financial report entitled, "Family Offshore" (HST\_PSI006889)(under entries for "SW Foreign Total Family FMV," "CW Foreign Total Family FMV," and "Total Scottish Annuity").

## Using an Offshore Insurance Company to Invest Offshore Dollars in U.S. Securities



**(d) Investing Offshore Dollars in An Energy Company**

The final example of a business venture funded with Wyly-related untaxed, offshore dollars involves a specific U.S. corporation, rather than a hedge fund, investment company, or insurance venture that used the offshore funds to make other investments. Green Mountain Energy Company is a U.S. energy business, incorporated in Delaware, that captured the attention of the Wyly family in 1997, and is still in operation today.<sup>1036</sup> The company has lost money every year since its inception. Nevertheless, from 1997 when the Wyllys first acquired an ownership interest in the company until the present time, Wyly-related offshore entities have supplied Green Mountain with at least \$175 million in offshore dollars.

Wyly family members, including Sam and Evan Wyly, actively participated in Green Mountain's management and directed millions of dollars from the Wyly-related offshore entities into this business venture. These funds continued to flow into Green Mountain even after audit reports questioned the viability of the venture, and the offshore trustees expressed concerns about the value of the investment. That the offshore trusts continued to transfer substantial sums to Green Mountain, despite years of loss, is added evidence of Wyly influence over the offshore dollars.

**Offshore Dollars.** Since August 1997, Wyly-related offshore entities have supplied the bulk of funds used to finance Green Mountain, sustaining the company through years of unprofitability. The total amount supplied from offshore is unclear, due to the complexity of the funding flows, several restructurings, and the fact that some investments have been written off. The evidence indicates that, at a minimum, the offshore entities financed most of the initial \$30 million funding commitment in 1997,<sup>1037</sup> as well as a little more than half of a second \$30 million funding commitment in 1998.<sup>1038</sup> They financed all of a \$22

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<sup>1036</sup> Green Mountain Energy Company has operated under several names since its inception. It began as Green Mountain Energy Resources, Inc.; became Green Mountain Energy Resources, LLC; briefly operated as Greenmountain.com Company; and then assumed its current name of Green Mountain Energy Company. For purposes of consistency, this Report will refer to this business venture simply as Green Mountain.

<sup>1037</sup> See, e.g., Locke's transfer of \$18 million (CC022566) and \$3.7 million (CC022572); Roaring Creek's transfer of \$1.2 million (CC016377); and Roaring Fork's transfer of \$1.8 million (CC016626). These entities contributed a total of \$24.8 million in 1997.

<sup>1038</sup> See, e.g., East Carroll's transfer of \$2.2 million (CC20008); Roaring Fork's transfer of \$1.5 million (CC016765); and Dortmund's transfer of \$341,607 (CC018933). See also loans made by Richland (\$5.5 million), Morehouse (\$4.5 million), and East Carroll (\$1.5 million) to provide financing to Green Mountain Energy Resources, LLC, through Security Capital. In total, in 1998, these entities contributed \$15.5 million to Green Mountain, of which \$11.5



million non-recourse loan to Green Mountain in 1999,<sup>1039</sup> and provided an additional \$7 million in capital in 2000.<sup>1040</sup> The offshore entities continued to supply funds to Green Mountain, even after an April 2002 Andersen audit questioned the company's ability to continue as a going concern. In the year following this audit, the offshore entities sent Green Mountain an additional \$19.3 million.<sup>1041</sup> By September 2003, internal Wyly financial records show that the Wyly-related offshore investments in Green Mountain totaled about \$175 million.<sup>1042</sup>

Using various financial records, the Subcommittee was able to trace about \$128 million in transactions that resulted in Wyly-related offshore funds being transferred to Green Mountain between August 1997 and June 2003. These offshore funds appear to have been provided either as capital contributions or as offshore "loans" to Green Mountain. About \$68 million of the \$128 million traced by the Subcommittee appears to have been provided as capital contributions, while the remaining \$60 million appears to have been transferred via pass-through loans from Security Capital or another Wyly-related entity, Green Funding I, explained below. These transactions help illustrate the magnitude of the offshore dollars provided to Green Mountain and the specific ways in which offshore funds were transferred into the United States.

The transactions traced by the Subcommittee show that offshore dollars provided to Green Mountain were routed through a complex funding structure that changed over time. Three interlocking companies played key roles: GMP Holdings Ltd., which appears to be a Cayman corporation; Green Funding I LLC (GFI), a Delaware limited liability

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million was supplied through Security Capital loans. For more information about the Security Capital loans to Green Mountain, see Appendix 4.

<sup>1039</sup> See, e.g., 5/3/99 email from Elaine Spang to Ms. Hennington (HST\_PSI005574) ("Sam signed a letter authorizing Green Funding I to loan greenmountain.com \$22,000,000 under a non-recourse loan.... [A]n offshore entity will loan the funds to Green Funding I under a similar non-recourse loan, and GFI will turn the funds around to gm.com.").

The funds were supplied to Green Mountain over the following seven months.

<sup>1040</sup> See, e.g., 3/29/00 email from Evan Wyly to Ms. Boucher and others (PSI00037501) ("Sam recommends fulfilling the Green Mountain request for \$7 million for April. ... Sam recommends investing whatever remaining balance that other investors do not take of the \$50 million. Charles will be contacting you regarding participation.").

<sup>1041</sup> See discussion below.

<sup>1042</sup> Of the \$175 million, about \$156 million was attributed to Sam Wyly's family and about \$18 million to Charles Wyly's family. See 9/30/03 financial statement entitled, "Global Family (SW & CW)" (PSI\_ED00093878-83) (including entries under "SW Foreign Total Family FMV," and "CW Foreign Total Family FMV" at PSI\_ED00093883).

company; and Green Funding II LLC (GFII), another Delaware limited liability company.

These three companies appear to have had complex ownership structures, all ultimately traceable to Wyly-related entities, primarily the Wyly-related offshore trusts and corporations. GMP Holdings, for example, appears to have been owned by more than ten Wyly-related IOM corporations, each of which supplied it with funds, including Elegance, Devotion, Dortmund, Greenbriar, Little Woody, Locke, Morehouse, Richland, Roaring Creek, Roaring Fork, and Rugosa.<sup>1043</sup> GFI originally had three owners: Maverick USA Corp., a Delaware corporation; EB&M Holdings, Ltd., a Cayman corporation; and GFII.<sup>1044</sup> Maverick USA Corp. was owned by Maverick Capital Ltd., the Texas limited partnership whose ownership was ultimately traceable to Sam and Charles Wyly.<sup>1045</sup> EB&M Holdings was owned by Maverick Fund LDC, one of Maverick's offshore funds in the Cayman Islands.<sup>1046</sup> In 2000, GFI's three owners resigned and were replaced by Moberly, an IOM corporation associated with Sam Wyly.<sup>1047</sup> Finally, GFII, which has been described as "an investment vehicle controlled by the Wyly family,"<sup>1048</sup> appears to have been owned by GMP Holdings and several domestic Wyly entities, including domestic trusts benefiting two of Sam Wyly's children<sup>1049</sup> and Green Funding Corporation.<sup>1050</sup> Green Funding Corporation is a Delaware corporation whose directors have included Sam and Evan Wyly. (HST\_PSI005363)

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<sup>1043</sup> See 4/13/99 fax from Chris Butner of Jones Day to Ms. Robertson on "Unit Distribution" of Greenmountain.com Company (PSI-WYBR00516-19)(listing the number of "units" that GMP Holdings would distribute to these IOM corporations)(hereinafter "Jones Day letter").

<sup>1044</sup> 8/6/97 Operating Agreement of Green Funding I, LLC (BA060725-45).

<sup>1045</sup> See discussion of Maverick Capital Ltd., above.

<sup>1046</sup> Subcommittee interview of Maverick (2/2/06).

<sup>1047</sup> See 6/8/00 Third Amendment to the LLC Agreement for Green Funding I LLC (BA PSI-W013658-62) (enabling GFI members to resign at any time and providing that no member that resigns may withdraw any of its capital contributions to Green Mountain); 6/9/00 Fourth Amendment to the LLC Agreement of Green Funding I LLC (BA PSI-W013653-57)(adding Moberly as a member and allowing GFII, Maverick USA, and EB&M Holdings to resign). Moberly sent \$14 million to Green Funding I on 6/15/00 (See BA PSI-W016710-11).

<sup>1048</sup> See 1999 Greenmountain.com prospectus (HST\_PSI066481).

<sup>1049</sup> See Jones Day letter (PSI-WYBR00516)(listing number of "units" that GFII would distribute to two of the trusts of Sam's children).

<sup>1050</sup> See Jones Day letter (PSI-WYBR00516-18)(listing number of "units" that Green Funding Corp. would distribute to Sam Wyly, Evan Wyly, and five trusts belonging to his wife and three children).

The majority of the offshore funds sent to Green Mountain flowed through Green Funding I (GFI), according to the bank records reviewed by the Subcommittee.<sup>1051</sup> According to GFI's operating agreement, "the business and affairs of the Company shall be managed under the direction of, the Managers," who are identified as Sam and Evan Wyly. This agreement enabled Sam and Evan Wyly, as GFI managers, to exercise control over the majority of the offshore funds sent to Green Mountain, since the bulk of those funds flowed through GFI first.

The offshore funds followed several paths, which simplified over time. In the earliest and most complex pathway, the offshore funds were transferred by offshore corporations to GMP Holdings, which, in turn, transferred them to GFII, which then transferred them to GFI, which finally transferred them to Green Mountain. The Subcommittee was able to trace about \$29 million that flowed in this manner between August 1997 and November 1998.<sup>1052</sup> In the second pathway, the funds went from offshore corporations to GMP Holdings, then to GFII, and then to Green Mountain, bypassing GFI. The Subcommittee identified \$10 million flowing in this manner during February 1999.<sup>1053</sup> In the third variation, funds went from offshore corporations, directly to GFI, and then to Green Mountain. The Subcommittee identified about \$74 million that was transferred in this manner from June 1999 to June 2003.<sup>1054</sup> Also during this time period, the Subcommittee identified two offshore corporations which transferred funds totaling about \$4 million directly to Green Mountain.<sup>1055</sup> Finally, in three transactions that took

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<sup>1051</sup> Out of the \$128 million traced by the Subcommittee, for example, about \$107 million or 80 percent passed through GFI before reaching Green Mountain Energy Company.

<sup>1052</sup> Specifically, during this time period, GMP Holdings received about \$21.8 million from Locke, \$3.3 million from Roaring Fork, and a total of about \$3.7 million from East Carroll, Roaring Creek, and Dortmund. See, e.g., account statements relating to these transactions (CC016377, CC016626, CC016765, CC018933, CC020008, CC022566-67, CC022572).

<sup>1053</sup> Specifically, in February 1999, GMP Holdings received \$3 million from Little Woody, \$2 million from Rugosa, and \$5 million from Greenbriar. See, e.g., account statements relating to these transactions (CC016545, CC021711, CC022330).

<sup>1054</sup> For example, from June 1999 through February 2000, GFI received about \$13.8 million from Richland. See account statements relating to these transactions (CC022948, CC023469, BA PSI-W016700-02). From June 1999 through June 2003, GFI received about \$8.26 million from Morehouse. See account statements relating to these transactions (CC023360, CC023373, CC023465, BA PSI-W016744). From March 2000 through June 2003, GFI received about \$39.5 million from Moberly. See account statements relating to these transactions (CC023670, BA PSI-W016706, CC023630, BA PSI-W016731, BA PSI-W016738, BA PSI-W016738, 42, 44). From November 2002 through December 2002, GFI received about \$3.6 million from Devotion. See documents relating to these transactions (BA042538 and PSI00038936).

<sup>1055</sup> East Carroll wired about \$1.6 million and Quayle wired about \$2.5 million directly to Green Mountain Energy Company. See account statements relating to these transactions

place during 1998, about \$11.5 million in offshore funds traveled from offshore corporations to Security Capital to Green Mountain.<sup>1056</sup>

Several of these transactions involved the provision of loans by the Wyly-related offshore entities, either directly to Green Mountain or through back-to-back wire transfers involving GFI or Security Capital. In 2003, for example, an internal Wyly financial record listed five loans to GFI totaling about \$53 million, including a \$42 million loan from Morehouse, a \$3.7 million loan from Moberly, another \$3.7 million loan from Morehouse, and \$3.7 million in loans from Devotion.<sup>1057</sup> All five loans apparently carried interest rates of 9 percent. By the end of 2004, the outstanding loans to GFI totaled about \$66 million.<sup>1058</sup> According to another internal Wyly record, after receiving these loans, GFI appears to have subsequently made corresponding loans to Green Mountain.<sup>1059</sup>

These offshore dollars were provided in response to funding needs identified by Wyly family members, such as Evan Wyly who worked on the Green Mountain venture; funding requests made by Wyly representatives; or cash flow projections developed by Green Mountain.<sup>1060</sup> Sam Wyly also made funding decisions and commitments in his capacity as a manager of GFI.<sup>1061</sup> After being informed of the amount of money needed in each instance, the trust protectors worked

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(CC024015, CC020002-03).

<sup>1056</sup> Specifically, in August 1998, Richland loaned \$5.5 million and Morehouse loaned \$4.5 million to Security Capital which made a \$10 million loan to Green Mountain Energy Company. In October 1998, East Carroll loaned \$1.5 million to Security Capital, which loaned the money to Green Mountain. For more information about these transactions, see Appendix 4.

<sup>1057</sup> See 1/1/03 chart listing loans to GFI (PSI\_ED00033156-63).

<sup>1058</sup> Id.

<sup>1059</sup> See undated chart entitled, "Green Mountain Energy Company Accrued Interest - Long Term Loan - Green Funding" (PSI\_ED00035472-75)(listing loans from GFI to Green Mountain Energy Company).

<sup>1060</sup> See, e.g., 2/23/00 email from Evan Wyly to Ms. Boucher, Ms. Robertson, and IFG (PSI\_ED00046890)(forwarding projected cash flow needs from Scott Cannon, Green Mountain chief financial officer); 3/29/00 email requesting \$7 million (PSI00037501); 6/28/01 email from Evan Wyly to Ms. Hennington and Ms. Boucher on "Green Mountain" (PSI\_ED00006169-70)(Evan wrote: "Sam is considering a \$5 million investment .... How do his sources of cash look?"; to which Ms. Boucher responded: "Assuming it will come from offshore, we should be okay.").

<sup>1061</sup> See, e.g., 5/3/99 email from Elaine Spang of the Wyly family office to Ms. Hennington (HST\_PSI005574)("I just learned that Sam signed a letter authorizing Green Funding I to loan greenmountain.com \$22,000,000 under a non-recourse loan. My understanding is that an offshore entity will loan the funds to Green Funding I under a similar non-recourse loan, and GFI will turn the funds around to gm.com.").

with the IOM trusts to identify available funds and arrange for one or more of the IOM corporations to wire cash to Green Mountain.<sup>1062</sup>

**Financial Losses.** Despite the millions of dollars supplied by Wyly-related parties and others, Green Mountain was not a profitable venture. According to an SEC filing, for example, during 1998, the company generated revenues of \$1.5 million and incurred net losses of \$46 million, and expected to “incur net losses in 1999 and subsequent fiscal periods.”<sup>1063</sup> In April 2002, a financial audit report issued by the Arthur Andersen accounting firm determined that Green Mountain had “not generated positive cash flows from operations since inception,” and expressed “substantial doubt about the Company’s ability to continue as a going concern.”<sup>1064</sup> In October 2004, another audit report, this one by PricewaterhouseCoopers, echoed the Arthur Andersen report, saying that Green Mountain has continued to incur “losses and negative cash flows from operations since inception and has a net capital deficiency which raise substantial doubt about the Company’s ability to continue as a going concern.”<sup>1065</sup>

At one point, one offshore trustee, IFG, expressed concern about sending funds to a company that kept losing money. In 1999, Ms. Robertson wrote: “D. Harris [managing director of IFG] has been raising hell about the money going into Green Mountain[.] It’s not that I don’t think he should be, just adds one more stress level. Currently he has agreed to fund through Sept[ember.] ... Surprisingly, Sam did not explode, but it actually seemed to cause him to step back and re-think the money is [sic] spending. We’ll see what happens.”<sup>1066</sup> Sam and Evan Wyly apparently spoke personally with IFG.<sup>1067</sup> Afterward, the

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<sup>1062</sup> See, e.g., 11/19/98 fax from Mr. French and Ms. Robertson to IFG (PSI\_ED00042897); 3/6/00 email from Ms. Boucher to IFG with copy to Ms. Robertson (MAV007958)(“As per the recent cash flow projections, the protectors recommend that you make arrangements for the \$6.5M funding for March to be paid over to Green Funding 1 at your earliest convenience. I suggest that you make arrangements to utilize funds on hand at Moberly Limited with Bank of Bermuda, as well as those that were realized on the recent SSW swap reset.”); 3/17/00 email from Ms. Boucher to IFG and Trident (PSI\_ED00047907)(requesting offshore funds to enable GMP Holdings to pay director fees and legal expenses).

<sup>1063</sup> 3/29/99 S-1 filed with the SEC by Greenmountain.com, at 4.

<sup>1064</sup> “Green Mountain Energy Company Financial Statements as of December 31, 2001 Together with Auditors’ Report” (PSI\_ED00014537-56).

<sup>1065</sup> “Green Mountain Energy Company Financial Statements as of December 31, 2003 and 2002” (MAV013233-60).

<sup>1066</sup> 8/18/99 email from Ms. Robertson to Ms. Boucher (PSI-WYBR00529).

<sup>1067</sup> See, e.g., 1/4/00 email from Evan Wyly to Ms. Robertson (PSI\_ED0070074)(stating that Sam and Evan Wyly would like to meet with David Harris of IFG about Green Mountain when Mr. Harris was in Dallas the following week); 4/25/00 email from Evan Wyly and IFG

offshore trusts administered by IFG continued to transfer funds to Green Mountain year after year. In the year following the negative 2002 Andersen audit report, for example, the Wyly-related offshore corporations sent Green Mountain an additional \$19.3 million.

Not all Wyly-related interests, however, continued to invest. In 2001, Quayle, an IOM corporation associated with Charles Wyly, apparently stopped sending funds and instead indicated a desire to sell its Green Mountain interests. A May 2001 email from Charles Wyly to Dennis Kelly, then Green Mountain CEO, stated: “Quayle Limited would like to proceed with the sale of all or any portion of its investment. I would appreciate your contacting existing shareholders to see if they have an interest now. Alternatively, Quayle would like to be a selling shareholder in the next planned financing. We are pleased with the growth and progress and outlook for Green Mountain. This simply is no longer a strategic holding for Quayle.”<sup>1068</sup> This email shows that Charles Wyly was making investment decisions for Quayle. It also shows that he was, in effect, directing the use of untaxed funds that he had placed offshore, brought back onshore to invest in Green Mountain, and then wished to deploy elsewhere.

In addition to the Wyly-related offshore entities, from the inception of this undertaking in 1997, Maverick also contributed substantial funds to Green Mountain, using both domestic and offshore dollars. Maverick spent about \$40 million to purchase both common and preferred stock in Green Mountain, becoming a major shareholder. It also purchased Green Mountain debt securities totaling about \$4.2 million. Altogether, by the end of 2004, Maverick’s contributions to Green Mountain totaled about \$46 million.<sup>1069</sup> Ms. Robertson, Maverick’s chief financial officer, told the Subcommittee that, by the end of 2004, Maverick had stopped investing in Green Mountain, but retained substantial shares and promissory notes. She indicated that, at that time, Maverick had marked down the market value of Green Mountain’s stock to zero.<sup>1070</sup>

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(PSI\_ED00048130-32)(showing Evan Wyly answering IFG questions about Green Mountain); 4/1/03 emails among Evan Wyly, David Harris, and Ms. Boucher (PSI\_ED00011922-26)(showing Evan Wyly answering IFG questions about Green Mountain).

<sup>1068</sup> 5/11/01 email from Charles Wyly to then Green Mountain CEO, Dennis Kelly (PSI\_ED00084054).

<sup>1069</sup> 3/23/06 Maverick letter at 5.

<sup>1070</sup> Subcommittee interview of Ms. Robertson (3/9/06). Maverick told the Subcommittee that, today, it holds about 12 percent of Green Mountain Energy Company’s outstanding stock. 3/23/06 Maverick letter at 6.

The Wyllys also invested domestic dollars in Green Mountain, reported substantial investment losses to the IRS, and used those losses to offset other U.S. income.<sup>1071</sup> It is unknown what role, if any, was played by the offshore dollars that provided the bulk of Green Mountain's financing.

**Green Mountain Ownership and Management.** Wyly-related ownership of Green Mountain began in 1997 and continues to the present time. In 1997, Green Mountain Power Corporation, a Vermont electric utility, sought investors to inject capital into a business venture undertaken to establish an energy distribution company that would buy electricity from environmentally friendly, renewable sources, and sell it to residential customers. In August 1997, the Wyllys provided \$30 million in exchange for 67 percent of Green Mountain's shares.<sup>1072</sup> According to Ms. Robertson, this investment was "Sam's idea."<sup>1073</sup> In 1998, the Wyllys invested another \$30 million, gaining control over 99 percent of the stock.<sup>1074</sup> In January 1999, the Wyllys bought the final 1 percent of Green Mountain's stock from the Vermont utility for \$1 million.<sup>1075</sup> In late January, Green Mountain was converted from an LLC into a corporation called Greenmountain.com Company, and management announced plans to take the company public.<sup>1076</sup>

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<sup>1071</sup> See, e.g., *Wyly v. Commissioner*, No. 122-04 (U.S. Tax Court, March 8, 2005).

<sup>1072</sup> See, e.g., 8/14/97 10-Q filed with the SEC by Green Mountain Power Corporation ("[O]n 8/6/97, GMRI entered into an agreement with Green Funding I, LLC, an affiliate of the Sam Wyly Family, which acquired a 67 percent membership interest in [Green Mountain].") "Green Funding I, LLC (the Investor) ... has agreed to invest up to \$30 million in [Green Mountain] in exchange for an equity interest of 67 percent.").

<sup>1073</sup> Subcommittee interview of Ms. Robertson (3/9/06). See also Subcommittee interviews of Michael French (4/21/06)(an investment banker had brought the company to Sam Wyly's attention; Sam and Evan Wyly led initial negotiations), and Maverick (2/2/06)("Sam Wyly helped launch the company").

<sup>1074</sup> See, e.g., 3/27/98 10-K filed with the SEC by Green Mountain Power Corporation ("An affiliate of the Sam Wyly Family, Green Funding I, LLC... agreed to invest... an additional \$10 million in [Green Mountain], increasing its ownership percentage to 74.3 percent."); 3/29/99 S-1 filed with the SEC by Greenmountain.com ("On 11/20/98, Green Funding I committed to an additional \$20 million to the LLC... raising Green Funding I's total equity interest to approximately 99 percent.").

<sup>1075</sup> 1/8/99 8-K filed with the SEC by Green Mountain Power Corporation ("GMP has agreed ... [to] the sale of GMRI's interest in [Green Mountain] in return for payment of \$1 million."); 3/29/99 S-1 filed with the SEC by Greenmountain.com ("As of January 1999, Green Funding I owned 100 percent of the equity interests in [Green Mountain].").

<sup>1076</sup> 3/29/99 S-1 filed with the SEC by Greenmountain.com ("Since 8/97, entities controlled by the Wyly Family have invested more than \$70 million in our company." "Between 8/97 and 12/98, Green Funding I, LLC, an investment vehicle controlled by the Wyly Family, contributed to us a total of \$60 million."). See also 10/15/99 draft settlement agreement and mutual release related to the employment of David White as Green Mountain CEO (PSI-WYBR00561)(discussing, in part, the structure of Green Mountain).

Despite this announcement, Green Mountain never actually went public. According to a subsequent SEC filing, the company ceased all activities in connection with the proposed public offering in late June 1999, due to negative “market conditions,” but did not notify the SEC at that time in the hope that market conditions would improve. On May 8, 2000, Green Mountain formally withdrew its registration statement, indicating to the SEC that it did not anticipate going forward with a public offering in the immediate future.<sup>1077</sup>

In June 1999, the three largest shareholders of Green Mountain were Locke, an IOM corporation associated with Sam Wyly, which held 6.5 million shares or 25 percent of Green Mountain’s common stock; Maverick Capital Ltd., which held 4.2 million shares or about 16 percent of the common stock (plus 78,000 stock options); and Sam Wyly, who held about 2 million shares or 8 percent of the common stock (plus 200,000 stock options).<sup>1078</sup> Together, these three blocks of shares represented more than 47 percent of the company’s common stock. As of early 2005, about 36 percent of the shares of Green Mountain are held by Wyly-related domestic and offshore interests and another 12 percent by Maverick.<sup>1079</sup>

In addition to gaining control of Green Mountain’s shares and providing it with substantial capital, Wyly family members were ongoing, active participants in Green Mountain’s management. Green Mountain’s 1999 filing with the SEC, for example, in which it signaled its intent to go public, stated that, “Our management team is led by Sam Wyly, our Chairman.” The filing listed not only Sam as chairman and a director, but also his son, Evan, as vice-chairman and a director, and his daughter, Lisa Wyly, as another director.<sup>1080</sup> Over the years, Sam and Evan played key roles in obtaining financing for Green Mountain, not only from the offshore entities as explained earlier, but also from

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<sup>1077</sup> 5/8/00 RW (Registration Withdrawal Request) filed with the SEC by Greenmountain.com (“As a result of market conditions, the Company ceased all activities in connection with the proposed public offering in late June 1999.”). Apparently, Green Mountain Energy Company was unable to arouse sufficient interest in the investing public to purchase its shares.

<sup>1078</sup> See 6/1/99 draft prospectus for Green Mountain’s initial public offering (HST\_PSI066378, 454-55).

<sup>1079</sup> 1/3/05 chart entitled, “Green Mountain Equity Structure” (PSI00079618); 3/10/06 Green Mountain “Information and Proxy Statement” (PSI00138719); 3/23/06 Maverick letter at 6.

<sup>1080</sup> 3/29/99 S-1 filed with the SEC by Greenmountain.com. See also, e.g., “The View from Green Mountain: Financier Mixes Business, the Environment, and Politics,” New York Times (3/16/00).



Maverick,<sup>1081</sup> and two major energy companies, BP Amoco and Nuon, a Dutch utility.<sup>1082</sup>

#### **(e) Analysis of Issues**

The five business ventures examined by the Subcommittee show how more than \$500 million in untaxed, offshore dollars were transferred by the Wyly-related offshore entities to business ventures of interest to Sam and Charles Wyly. In these instances, more than \$250 million was invested in the Wyly-related hedge funds, Maverick and Ranger. About \$43 million went to First Dallas, a private investment fund controlled by Charles Wyly and his sons-in-law. Another \$20 million in capital contributions and loans went to the offshore insurance company, Scottish Annuity (Cayman), which was then controlled by the Wyls. Another \$14 million was placed in SAC annuity policies and turned over to Maverick or Ranger for investment. More than \$175 million in offshore funds was transferred to Green Mountain, a U.S. energy company acquired by the Wyls.

The general pattern presented by these business ventures is additional evidence that the Wyls and their representatives were directing the use of offshore assets. In each instance, Sam and Charles Wyly initiated the investment, the trust protectors communicated funding needs to the offshore trustees, and the offshore trustees complied. The trust protectors identified no instance in which a trustee initiated a business investment on its own, and no instance in which a trustee actually declined to supply requested funding. Moreover, the businesses that received the offshore funds were ones in which the Wyls exercised significant management control which allowed them to further direct the use of the offshore dollars.

#### **(6) Funneling Offshore Dollars Through Real Estate**

During the thirteen years examined in this Report, tens of millions of untaxed, offshore dollars were used to acquire, improve, and operate U.S. real estate properties used by the Wyls for personal residences or business ventures. The Subcommittee analyzed in detail five real estate properties that received offshore dollars totaling about \$85 million. In the case of new real estate, Wyly family members chose the properties,

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<sup>1081</sup> See, e.g., 11/1/02 email from Evan Wyly, asking whether Maverick is able to provide a \$1 million guarantee for Green Mountain Energy Company (PSI\_ED00011174-75).

<sup>1082</sup> See, e.g., emails between Evan Wyly and David Harris of IFG on 11/23/99 (PSI\_ED00069565) and 12/20/99 (PSI\_ED00069934), and between Sam Wyly, Evan Wyly, and Matt Cheney of Nuon USA on 5/22/02 (MAV012945) (discussing the negotiations).

initiated construction or renovation efforts to render the property suitable to their needs, and made personal use of the real estate. In other instances, Sam or Charles Wyly used real estate they already controlled to arrange sham real estate sales or loans that brought millions of offshore dollars into the United States for the personal use of Wyly family members. In each instance examined by the Subcommittee, the real estate transactions were initiated by the Wyls and agreed to by the offshore trustees. Two trust protectors told the Subcommittee that they could recall no instance where an offshore trustee had initiated a real estate transaction or had declined to carry out a real estate transaction recommended to them.<sup>1083</sup> These real estate transactions offer additional proof of the extent to which the Wyls were directing the use of trust assets.

The five real estate properties also demonstrate the key role played by legal, financial, and other professionals in bringing untaxed, offshore dollars into the United States to advance Wyly-related interests. In each instance, legal advisers designed complex structures, involving layers of Isle of Man and U.S. shell entities, trusts, and financial accounts, to acquire, improve and operate the real estate. These structures were used to finance 90 percent or more of the U.S. real estate costs with offshore dollars. In some instances, offshore dollars were funneled through sham real estate sales or loans to supply funds for the personal use of Wyly family members. In every instance, U.S. financial institutions facilitated the transactions by authorizing frequent, multi-million-dollar wire transfers from offshore jurisdictions into the United States.

#### **(a) Real Estate Transactions in General**

From 1992 to 2005, multiple U.S. real estate properties used by Sam and Charles Wyly for personal residences or business ventures were funded in whole or in substantial part with offshore dollars.<sup>1084</sup> The properties examined here include a \$45 million 244-acre ranch near Aspen, Colorado, known as Rosemary's Circle R Ranch, containing a half dozen residences built for the Sam Wyly family; a \$9 million 26-acre ranch near Aspen, sometimes referred to as the L.L. Ranch, containing an 8,000 square foot residence used by the Charles Wyly family; a \$13 million set of condominiums in downtown Aspen operating as Cottonwood Ventures and containing, in part, art galleries

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<sup>1083</sup> Subcommittee interviews of Mr. French (4/21/06) and Ms. Robertson (3/9/06). Ms. Hennington had the same recollection. Subcommittee interview of Ms. Hennington (4/26/06).

<sup>1084</sup> The real estate properties examined in this Report are limited to those funded in whole or substantial part with offshore dollars; the Report does not discuss Wyly-related real estate properties that appear to have been funded primarily with domestic funds.

run by Sam Wyly's daughter; a \$12 million 95-acre ranch near Dallas, Texas, known as Stargate Horse Farms, run by Charles Wyly's daughter; and an \$8 million oceanside property in Malibu, California, owned by Sam Wyly until 2002.<sup>1085</sup> While each of these real estate transactions had unique characteristics, all had common elements regarding the property's ownership structure and the financial mechanisms used to obtain offshore funding.

The structures used to acquire and finance the five real estate transactions were designed by legal counsel, in particular Rodney Owens, a partner at Meadows, Owens, Collier, Reed, Cousins & Blau LLP (Meadows Owens), a Texas law firm that provided tax and real estate advice to the Wyly family.<sup>1086</sup> Meadows Owens told the Subcommittee that the structures were the result of an indepth research effort by Mr. Owens and others to design an innovative means to ensure Wyly access to properties being financed primarily with offshore funds.<sup>1087</sup> Numerous emails discussing the real estate transactions refer to Mr. Owens or Meadows Owens, and indicate that legal counsel was being consulted with respect to the real estate transactions.<sup>1088</sup> To date, despite Subcommittee requests, the Wyllys have not provided a detailed explanation of the legal reasoning behind these real estate structures, and

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<sup>1085</sup> Additional properties used by the Wyly family also appear to have been funded primarily with offshore dollars. Due to resource constraints, however, detailed analysis will be confined to the five properties to illustrate the issues involved in offshore funding of U.S. real estate. Two of these examples, involving Rosemary's Circle R Ranch and the LL Ranch, are examined here; the remaining three, involving Cottonwood Ventures, Stargate Horse Farm, and the oceanside property in Malibu, are presented in Appendix 5.

<sup>1086</sup> Subcommittee interviews of Meadows Owens (4/27/06 and 7/7/06); Ms. Robertson (3/9/06); discussions with legal counsel currently representing the Wyllys. Mr. Owens provided legal advice to the Wyly family from 1997 until 2001. In 2003, Mr. Owens died of ill health. Other Meadows Owens lawyers who helped to advise the Wyly family include Charles Pulman, Alan Stroud, and Tray Cousins.

<sup>1087</sup> Subcommittee interview of Meadows Owens (7/7/06). Meadows Owens told the Subcommittee that a lengthy legal memorandum was produced describing the real estate structure, but declined due to attorney-client privilege to provide the Subcommittee with a copy.

<sup>1088</sup> See, e.g., 9/10/99 telephone message for Charles Wyly (HST\_PSI001136) ("Shari said NationsBank is ready to go on Little Woody and Lambda project as soon as we can get answers out of Owens."); 11/2/99 email from Ms. Boucher to Ms. Robertson (MAV007771) ("I've been thinking about the email this morning from Meadows Owens."); 11/17/99 emails promising to seek advice from Mr. Owens related to the 1 and 99 percent contributions for real estate costs (PSI00134652-53); 4/18 and 4/19/00 emails exchanged between Ms. Boucher and Ms. Hennington about Cottonwood (PSI-WYBR00577) ("[T]hey are waiting on Rodney's comments on the offer documents .... I called Rodney, and, with respect to the structure - they are still working on it."); 10/16/00 memorandum from Ms. Boucher to Ms. Robertson, Mr. French and others on Stargate horse farm (MAV008220-21) ("Keeley and I are consulting Rodney to see if we can use a structure similar to that which was used for the gallery in Aspen, thus utilizing foreign assets for the cash injection"); 6/20/01 email showing Mr. Owens was consulted about methods to pay for residences being built on Rosemary's Circle R Ranch (PSI\_ED00013928).

have not provided any legal opinions or analysis, instead asserting the attorney-client privilege.

The common elements in the ownership and funding structures used for the five properties involve a tiered set of shell entities in offshore jurisdictions and the United States. They can be summarized as follows.

The apparent initial step was for one of the Wyly-related offshore trusts to form a new Isle of Man (IOM) shell corporation whose sole function was to serve as a funding gateway for offshore dollars to be spent on a designated real estate property in the United States. Next, this IOM corporation and one or more Wyly family members typically established a trust in the United States to manage the designated property. The management trust was established by a trust agreement signed by the IOM corporation and Wyly family members. This agreement specified that the trust grantors, meaning the IOM corporation and the Wyly family members who signed the trust agreement, were allowed “full and complete Usage” of the property owned by the trust without any obligation by the trustee to monitor such use.<sup>1089</sup> These provisions explicitly authorized Wyly family members to make personal and unfettered use of the real estate.

The trust agreement also assigned to each grantor a so-called “Trust Share” reflecting the grantor’s proportional contributions to the trust’s assets.<sup>1090</sup> For example, a grantor who contributed ten percent of the trust’s assets acquired a ten percent “trust share.” The agreement further obligated each grantor to pay a portion of the real estate costs reflecting that “trust share,” such as mortgage payments, utilities, operating expenses, and construction costs. In other words, a grantor with a ten percent trust share had to pay ten percent of the real estate costs.

In the five examples examined by the Subcommittee, the IOM corporation typically made a cash contribution to the U.S. management

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<sup>1089</sup> See, e.g., 10/1/99 Woody Creek Ranch Management Trust, section 2.2 (BA120713-40, at 21-22); 8/1/00 Cottonwood Ventures II Management Trust, section 2.3 (BA163416-44, at 25).

<sup>1090</sup> See, e.g., 10/1/99 Woody Creek Ranch Management Trust, sections 1.3 and 2.3 (BA120713-40, at 18 and 22); 8/1/00 Cottonwood Ventures II Management Trust, sections 1.3 and 2.4 (BA163416-44, at 21 and 26). Meadows Owens told the Subcommittee that this approach, using “trust shares,” was an innovation designed by Mr. Owens. Subcommittee interview of Meadows Owens (4/27/06 and 7/7/06). The Subcommittee consulted other real estate and tax experts, who indicated they had not seen this approach in other real estate transactions.

trust resulting in its acquiring a 98 or 99 percent trust share, while Wyly family members made a much smaller contribution resulting in a 1 or 2 percent trust share. Real estate costs were then split on the same basis, with 98 to 99 percent of the costs attributed to the offshore corporation and only 1 to 2 percent attributed to a Wyly family member. This arrangement was apparently intended to enable Wyly family members to obtain full usage of the trust's real estate, while paying a minimal percentage of the costs.

After the U.S. management trust was established and funded, the final step was for the trust to form a new U.S. partnership or limited liability corporation. This U.S. entity, using funds supplied from the Wyls and from offshore, then acquired the designated property and served as the owner of record for the U.S. real estate.<sup>1091</sup>

Most of the funds spent to acquire, improve, and operate the real estate moved from an offshore entity to a U.S. entity. The funds typically moved from one of the 58 Wyly-related offshore trusts or corporations in the Isle of Man, to the newly created IOM shell corporation created to serve as the funding gateway for the particular real estate, to the U.S. management trust, and finally to the U.S. entity serving as the owner of record for the property. The property owner then used the offshore funds to pay the acquisition, construction, and operating costs associated with the real estate. On some occasions, Wyly-related offshore entities ignored this funding pathway and wired funds directly to the U.S. management trust or directly to the U.S. property owner. More often, however, perhaps to avoid direct wire transfers from Wyly-related offshore entities to the U.S. property owner, the offshore funds took the longer route, which often required three or more wire transfers to move funds from the originating offshore entity to the final U.S. entity. This multi-step process also made it more difficult for anyone examining the real estate to trace the origin of the funds and determine that they came from an offshore trust related to the Wyly family.

U.S. and offshore financial institutions played a vital role in making these real estate structures work effectively. Lehman Brothers, Bank of America, Bank of Bermuda (IOM), Quensgate Bank and Trust,

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<sup>1091</sup> In instances where the property was being purchased for a business venture, rather than a personal residence, a Nevada corporation was sometimes inserted into the ownership chain. This Nevada corporation then typically functioned as an intermediary between the Wyly-related offshore entities and the U.S. entities that owned the U.S. property. According to representatives of the Wyls, the reason for this substitution was that it was easier for a corporation than a trust to operate a business. Subcommittee interview of Ms. Robertson (4/21/06) and Meadows Owens (7/7/06). See real estate examples for more information.

and other financial institutions routinely authorized the offshore trusts and corporations to wire substantial funds into the United States, with few questions asked. In these five examples, hundreds of thousands and sometimes millions of dollars moved through multiple accounts, across international lines, within days. Securities accounts often functioned as bank accounts, allowing millions of dollars to pass through them without any securities transactions. Without the cooperation of the banks and securities firms that controlled the financial accounts, these complex real estate structures could not have effectively been used to pay the U.S. real estate bills.

Also critical to the functioning of these complex real estate structures were the financial professionals who processed the paperwork, tracked the real estate costs, and identified available offshore funds. Key players included Ms. Robertson and Ms. Hennington from the Wyly family office, Ms. Boucher from the Irish Trust Company, and the IOM offshore service providers who administered the offshore trusts and corporations. Together, they moved tens of millions of offshore dollars into the United States through real estate transactions benefitting the Wyly family.

The five examples examined in this Report show how these complex structures, designed by lawyers and implemented by bankers, brokers, and other financial professionals, were used to supply millions of offshore dollars to pay U.S. real estate costs and, through sham real estate sales and loans, provide additional millions of offshore dollars for the personal use of Wyly family members in the United States. Two of the examples are explained here; the other three appear in Appendix 5.

#### **(b) Rosemary's Circle R Ranch**

Rosemary's Circle R Ranch is a 244-acre ranch near Aspen, Colorado, that was purchased in 1999. Ninety-nine percent of its purchase price, \$11.3 million, was paid for with offshore dollars. Offshore funds also paid for 99 percent of the cost of building multi-million-dollar, customized homes on the ranch for the personal use of Wyly family members. They also paid for 99 percent of the ranch's operating costs. By early 2005, total offshore funds spent on this property exceeded \$45 million.<sup>1092</sup>

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<sup>1092</sup> See chart entitled "Rosemary's Circle R Ranch Offshore Funding," prepared by the Subcommittee Minority Staff (listing 35 wire transfers from IOM entities that, from 10/4/99 to 2/4/05, transferred over \$47 million into the United States to be spent on this real estate). See also 12/31/04 financial statement for Rosemary's Circle R Ranch Ltd. (PSI00026595)(showing that \$45,685,260 had been invested in Rosemary's Circle R Ranch Management Trust); 12/31/04 chart entitled, "Rosemary's Circle R Ranch Budget/Cost to Date & Projected,"

The property was purchased in October 1999. Sam Wyly appears to have initiated the idea of buying the property, and the trust protectors recommended the purchase to the LaFourche Trust, an Isle of Man trust benefitting the Sam Wyly family.<sup>1093</sup> The documentation indicates that the LaFourche Trust was given little time to evaluate the purchase, and the trustee, Trident, was pushed to quickly provide the funds needed for the \$11.3 million purchase price. In an email about one month after the purchase, Ms. Boucher wrote to Ms. Robertson: “Francis [Webb of Trident] has not yet seen any original Trust documents for execution regarding the Woody Creek Ranch Management Trust .... Francis commented after the fact on being very rushed on moving forward with the Woody Creek Ranch closing. Which he was, but that’s life.”<sup>1094</sup> Initially referred to as the Woody Creek Ranch, Sam Wyly renamed the property in 2000 as Two Mile Ranch, and renamed it again in 2003 as Rosemary’s Circle R Ranch, which is how the property is currently known.<sup>1095</sup>

Over the following six-year period from 1999 to 2005, multiple residences were built on the property, with particular houses designated for particular branches of the Sam Wyly family.<sup>1096</sup> Additional sums

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(PSI\_ED00037498) (listing “Costs to Date Dec 31/04” of \$46,299,906).

<sup>1093</sup> See, e.g., 8/19/99 email from Ms. Robertson to Ms. Boucher (PSI-WYBR00529)(“Sam still has a contract pending on one property. It is up to him to determine whether he wants to counter. I’m not sure what he’s going to do. He ... wasn’t too sure he should be spending \$10-\$14 million to purchase the property and then spending money on building houses.”); 3/28/00 email from Ms. Boucher to Ms. Robertson (PSI\_ED00047995). Because Sam Wyly asserted his Constitutional rights and did not participate in an interview, the Subcommittee was unable to ask him about the documents suggesting he initiated this real estate transaction or describing other information related to this matter. The same is true for the other real estate transactions.

<sup>1094</sup> 11/4/99 email from Ms. Boucher to Ms. Robertson (PSI\_ED00043836-37).

<sup>1095</sup> See, e.g., 11/4/03 email from Ms. Hennington discussing the name changes, among other matters (PSI\_ED00003352); 6/6/03 email from Ms. Hennington to Ms. Boucher (PSI\_ED00012211)(“Just got off the phone with Sam and they are changing the name of the Ranch to Rosemary’s ranch – i have a call in to confirm with Kelly before I start the whole process. ?????”). The fact that Mr. Wyly twice renamed the ranch is evidence of his involvement with and influence over this property.

<sup>1096</sup> See, e.g., 11/1/00 email from Ms. Boucher to IFG (MAV008239)(“each family group should fund construction of their specific houses,” while “the common development costs should be split by everyone”); 4/10/01 email from Ms. Hennington to Ms. Boucher (PSI\_ED00005778-80)(“help me remember that as we start to build other houses, those individuals will need to contribute to the Management trust”); 5/8/01 memo from Ms. Boucher to Sam Wyly (PSI00078291-93)(“Kelly will need liquidity to fund construction costs of their home on Two Mile Ranch.”); 4/30/01 email from Ms. Boucher to Kristin Yeary (PSI\_ED00013764-66)(requesting “break down of cost allocations” for “individual houses”); Kristin responds on 5/9/01: “The last I heard, mine and Jay’s house will be built first, then Kelly’s and Rosemary’s simultaneously will start soon after mine ....”); 6/6/01 email from Ms. Hennington to Ms. Boucher (PSI\_ED00005972)(“Based on the 4 lots as they stand now, they would be allowed to

were spent on other structures, as well as roads, water and power systems, and landscaping. Wyly family members worked with the architects and builders to design the homes and other structures.<sup>1097</sup> As residences became available for occupancy, Wyly family members made personal use of them on a rent-free basis. There is no evidence that any part of the property was ever rented to a third party.

Two Colorado limited liability corporations (LLCs) served as the owners of record for the property.<sup>1098</sup> Both were wholly owned by a

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build 7 houses [but] ... [t]hey would like to build 8"); 6/11/01 email from Ms. Yeary to Ms. Boucher (PSI\_ED00013849-50)("Sam has informed Kelly that he has set up accounts for each child's house."); 6/17/01 email from Ms. Elliott to Ms. Hennington (PSI\_ED00013929)("You will soon be receiving bills for work on Mom's site at the ranch."); 11/7/01 email from Ms. Hennington to Ms. Boucher (PSI\_ED00006516)(providing costs for houses being built for "Rosemary," "Kelly and Jason," "Lisa & John," "Kristin and Jay"); 3/14/03 email from Ms. Hennington to Ms. Boucher (PSI\_ED00013731)(providing status report on ranch, including construction of houses for "Kelly" and "Rosemary"); 7/31/03 document allocating "Ranch Costs" (PSI00026229)(allocating costs for "Lisa & John," "Acton House," "CP Wyly House," "E&B Wyly," "Elliott House," "Family Barn," "Matthews," and "S&C Wyly"); 9/2/03 email from Ms. Boucher to Ms. Yeary (PSI\_ED00003203-04)("I was speaking with Sam & Evan today, and we would like to get an idea of budget going forward at the Ranch" including "[c]osts to complete individual houses on the property."); 8/25/04 email from Margot MacInnis to Ms. Hennington and Ms. Boucher (PSI\_ED00015013) (providing "updated July Budget" for the ranch, including costs related to Elliott, Graham, and Matthews residences); undated document, likely prepared in 2004 (PSI\_ED00012468-69)(providing status report on various projects, including "Two Mile" which projects total construction costs of \$55 million and completion of residences for Elliott, Graham, Matthews, and Sam and Cheryl Wyly in 2004 and 2005); 12/31/04 chart entitled, "Rosemary's Circle R Ranch Budget/Cost To Date & Projected," (PSI\_ED00037498)(listing "Costs to Date Dec 31/04" including for residences for Elliott, Acton, "S&C" [Sam and Cheryl Wyly], Graham, "E&B Wyly" [Evan and Barbara Wyly], and Matthews); 12/31/04 "SUMMARY: Rosemary's Ranch Allocation of assets" (PSI\_ED00037501) (allocating ranch costs among the Bessie Trust and the six Cayman LLCs associated with Sam Wyly's six children).

<sup>1097</sup> See, e.g., 11/4/99 email from Bob Witek of RJW to Wyly family office employee, Rena Alexander (PSI00025486)("I spoke with Cheryl & Sam[.] They approved the purchase of the required [Transfer Development Rights] for the ranch."); 3/17/00 document naming Cheryl Wyly and Kelly Wyly Elliott as agents for the U.S. management trust to handle permits for the ranch (PSI\_ED00036411); 4/3/01 "Two Mile Ranch Memo" from Kelly Wyly Elliott to Gary Beach who handled environmental issues during construction, with copies to Sam Wyly and others (PSI00039972)(discussing possible installation of a natural gas line and other utilities); 5/26/01 email from Ms. Elliott to Ms. Hennington, with copies to Sam Wyly and others (PSI\_ED00013774)(discussing contract related to building residences on the ranch); 8/24/01 "Negative Covenant Prohibiting Subdivision of Property" executed by Ms. Elliott (PSI00039975-78); 11/7/01 email from Ms. Hennington to Ms. Boucher (PSI\_ED00006516) (advising on the costs of five houses and a barn); 3/14/03 email (PSI\_ED00013731)(providing status report on ranch construction); 10/3/03 email from Ms. Yeary to Ms. Boucher (PSI\_ED00003203-08) (forwarding a draft letter from the construction consultant to Sam Wyly detailing remaining construction projects on the ranch); 4/5/04 email from Ms. Boucher to Jana Frederick (PSI\_ED00014742)(conveying information from Ms. Elliott about construction projects on the ranch).

<sup>1098</sup> See chart entitled, "Rosemary's Circle R Ranch Funding Structure," prepared by the Subcommittee Minority Staff. The property consists of 4 parcels of land in Pitkin County, Colorado. Each LLC owned two of the four parcels of land. The two LLCs were initially named



U.S. management trust, established to manage the ranch.<sup>1099</sup> This U.S. management trust had two grantors, Sam Wyly and an IOM corporation now known as Rosemary's Circle R Ranch Ltd.<sup>1100</sup> Sam Wyly's "trust share" was 1 percent, while the IOM corporation's "trust share" was 99 percent.

When the U.S. management trust was first established in 1999, Sam Wyly contributed \$110,000 in cash and his interests in the two Colorado LLCs which he valued at \$5,000; while the IOM corporation contributed ten times as much via a cash contribution of \$11,385,000.<sup>1101</sup> This pattern of parallel 1 and 99 percent contributions continued over the following years.<sup>1102</sup> By the end of 2004, for example, internal Wyly documents show that Sam Wyly had contributed a total of about \$434,000 to the U.S. management trust or 1 percent of its assets, while the IOM corporation had contributed 99 percent, or a total of more than \$43 million.<sup>1103</sup>

Rosemary's Circle R Ranch Ltd., the IOM corporation that acted as the funding gateway for offshore dollars spent on the property, was

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Rocky Mountain Serenity Ranch I LLC and Rocky Mountain Serenity Ranch II LLC. Later they were renamed Two Mile Ranch I LLC and Two Mile Ranch II LLC. In 2003, they were renamed Rosemary's Circle R Ranch East LLC and Rosemary's Circle R Ranch West LLC. See, e.g., Colorado Department of State reports on Rosemary's Circle R Ranch East LLC and West LLC (S4562-66). Sam Wyly's daughter, Kelly Wyly Elliott, has served as the manager of both LLCs. (PSI00039975-78)

<sup>1099</sup> See 10/1/99 U.S. trust agreement (BA120713-40); 12/31/03 financial statement of U.S. management trust (PSI00040012). This U.S. management trust was initially named the Woody Creek Ranch Management Trust, renamed in 2000 as Two Mile Ranch Management Trust (BA062067-69), and renamed in 2003 as Rosemary's Circle R Ranch Management Trust (BA062051-54). Its initial trustees were Mr. French and Ms. Robertson, later replaced by Sam Wyly's daughters, Kelly and Lisa (SR0001069-71; PSI\_ED00018641).

<sup>1100</sup> See U.S. trust agreement (BA120713-40). The trust agreement characterizes it as a U.S. grantor trust whose grantors are Sam Wyly and the IOM corporation. *Id.* at BA120718-19. The IOM corporation was initially named Woody Creek Ranch Ltd., later renamed Two Mile Ranch Ltd., and renamed still later as Rosemary's Circle R Ranch Ltd. See 9/30/99 Certificate of Incorporation No. 97427C; BA062052, 68; IOM Certificates of Change of Name.

<sup>1101</sup> See U.S. trust agreement (BA120713-40, at 40)(initial contributions to trust); 1999 financial statement for the U.S. management trust (PSI00045614).

<sup>1102</sup> See, e.g., 12/31/00 financial statement for the U.S. management trust (PSI\_ED00063562-64) (showing Sam Wyly's contributions totaled \$130,625, while the IOM corporation's contributions totaled \$12,933,919); 1/31/01 Two Mile Ranch Management Trust (PSI00043783); 2002 "Wyly Family Capital Account Activity Report" (PSI00040032) (showing Sam Wyly's contributions totaled \$287,528, while the IOM corporation's contributions totaled \$27,495,245); 12/31/03 "Working Trial Balance" for Rosemary's Circle R Ranch Management Trust (misdated as 12/31/02)(PSI\_ED00055675-79)(showing Sam Wyly's contributions totaled \$380,808, while the IOM corporation's contributions totaled \$36,711,442).

<sup>1103</sup> See 2004 "Working Trial Balance" for Rosemary's Circle R Ranch Management Trust (PSI\_ED00050943-47, at 47).

initially owned by Devotion.<sup>1104</sup> Devotion, in turn, was owned by the 1992 LaFourche Trust. After legal counsel advised the Wyly family that U.S. real estate should be owned by the 1994 trusts instead of the 1992 trusts, the Wyly family office apparently asked the LaFourche Trust to transfer the property to the 1994 Bessie Trust associated with Sam Wyly.<sup>1105</sup> The LaFourche Trust complied. In 2000, three months after acquiring it, Devotion “sold” the IOM corporation to the Bessie Trust, giving up all ownership interest in the ranch for no apparent profit.<sup>1106</sup> In 2001, the six Cayman LLCs associated with Sam Wyly’s six children acquired one share each in the IOM corporation from the Bessie Trust, becoming partial owners along with the trust itself.<sup>1107</sup>

The LaFourche Trust provided the initial funding to purchase the Colorado ranch. Bank documents show that, on November 4, 1999, Devotion wired \$10.2 million in offshore funds to the U.S. management trust which, in turn, wired \$5 million to each of the Colorado LLCs to buy the property.<sup>1108</sup> Another \$1.1 million, in a separate “earnest money” payment by Devotion, brought the total purchase price of the property to about \$11.3 million.<sup>1109</sup> There is no record of any mortgage.

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<sup>1104</sup> See, e.g., 10/31/99 financial statement for the “Foreign Systems” (PSI00109903) (showing LaFourche Trust owned Woody Creek Ranch); 2/15/00 financial report indicating Devotion owned the ranch (PSI\_ED00046873-75); IOM corporation’s “Annual Return” as of 9/30/00, filed in the Isle of Man, “List of Past and Present Members” (showing Devotion had owned the corporation); emails stating that Woody Creek Ranch Limited was owned by Devotion (PSI\_ED00043836-37, 47995, 72001).

<sup>1105</sup> See, e.g., 11/4/99 email from Ms. Boucher to Ms. Robertson (PSI\_ED00043836-37) (discussing acquisition by Bessie Trust “of Woody Creek Ranch Limited from La Fourche using note”); 11/9/99 document entitled, “Trustee Meetings” (MAV007783-85) (“Per Rodney all U.S. real estate should be purchased from 1994 Trusts.”); 12/9/99 email from Ms. Boucher to Ms. Robertson (MAV007788) (“I went back to Rodney again yesterday on the Devotion/La Fourche/Little Woody Creek Ranch Funding, and await an answer.”); 11/2/00 email from Ms. Boucher to Ms. Robertson (PSI\_ED00044455) (discussing need to speak to trustees about “the crossover between the 1992’s and the 1994 trusts”). The trustee of the LaFourche Trust was then Trident. The trustee of the Bessie Trust was then IFG.

<sup>1106</sup> See, e.g., PSI\_ED00024963, 43836, 44244, 47995 (discussing potential bookkeeping for sale), 47999 (discussing final structure of sale), 72001 (discussing obtaining funds for sale). Yurta Faf, an IOM corporation owned by the Bessie Trust, appears to have paid Devotion for the initial cost of purchasing the property, but did not provide it with any profit. See, e.g., PSI\_ED00046873-75 (showing Yurta Faf cash outflow of \$11.7 million as of 2/15/00, due to “LWCRL sale”); PSI\_ED00006055 (showing Yurta Faf with an “inter-trust” receivable of \$12.2 million as of 4/30/01).

<sup>1107</sup> PSI00078959-64, 71494-97.

<sup>1108</sup> See, e.g., PSI\_ED00043681, PSI00025492, 496-503 (bank records, internal Wyly financial records, and related email messages documenting the \$10.2 million transfer by Devotion to the United States to buy the property).

<sup>1109</sup> See, e.g., CC011842 (showing that, on 8/30/99, Devotion wired \$1.1 million to Alpine Bank and Trust); PSI00025489, 97 (discussing separate earnest money payment of \$1.1 million by Devotion).

Over the next five years, a number of offshore entities associated with Sam Wyly and his family provided an additional \$34 million in offshore funds to improve and operate Rosemary's Circle R Ranch. In some cases, the Wyly family representative handling the bills for the ranch had requested the offshore funds by sending an email to Ms. Boucher.<sup>1110</sup> In other cases, Ms. Boucher appears to have used cost projections to anticipate the ranch's funding needs. Ms. Boucher then worked with the trust protectors and the offshore trusts to supply the offshore funds. All funding requests appear to have been met within days.

The offshore entities typically provided amounts ranging from \$200,000 to \$4 million at a time. They typically wired the funds to the U.S. management trust which then forwarded the funds to the LLCs to spend on the ranch. For example, in March 2000, Devotion of the LaFourche Trust wired \$500,000 to the IOM corporation which, in turn, wired the funds to the U.S. management trust.<sup>1111</sup> In April 2001, Sarnia Investments of the Lake Providence International Trust wired \$2 million to the IOM corporation which then wired the funds to the U.S. management trust for use on the property.<sup>1112</sup> In September 2001, Sarnia wired another \$3.6 million to the IOM corporation which, in turn, wired it to the U.S. management trust.<sup>1113</sup> In June 2001, Audubon Assets, a subsidiary of the Bessie Trust, wired \$1 million to the IOM corporation which then sent it to the U.S. management trust.<sup>1114</sup> In May 2002, the IOM corporation wired another \$4 million to the U.S. management

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<sup>1110</sup> Wyly family office personnel, as well as Kristin Yeary who handled some of the ranch bills, directed offshore funding requests to Ms. Boucher. See, e.g., 3/3/00 email requesting \$500,000 (PSI\_ED00047857); 9/20/00 email requesting an unspecified amount of funds (PSI00037025); 9/21/00 email requesting \$750,000 (PSI\_ED00048761); 10/2/00 email requesting \$200,000 (PSI00037011); 11/2/00 email requesting \$250,000 (PSI00036997); 4/10/01 email requesting \$2 million (PSI\_ED00005774); 8/14/01 email requesting \$1 million (PSI\_ED00006347); 9/3/01 email requesting \$3.6 million (PSI\_ED00014220); 2/11/04 email requesting \$1 million (PSI\_ED00012605); 4/26/04 email requesting \$300,000 (PSI\_ED00014247-48); 1/19/05 email requesting \$2 million (PSI\_ED00052880-81).

<sup>1111</sup> See PSI\_ED00047857, CC011870, PSI00037113 (showing the request for and movement of the funds).

<sup>1112</sup> See CC004168 (showing, on 4/18/01, Sarnia wired \$2 million to Two Mile Ranch Ltd.); and BA144515-16 (showing, on 4/19/01, Two Mile Ranch Ltd. wired \$2 million to the U.S. management trust).

<sup>1113</sup> See CC027320 (showing, on 9/6/01, Sarnia wired \$3.6 million to Two Mile Ranch Ltd.); and BA144524 (showing, on 9/11/01, Two Mile Ranch Ltd. wired \$3.6 million to the U.S. management trust).

<sup>1114</sup> See CC009849 (showing, on 6/22/01, Audubon Assets wired \$1 million to Two Mile Ranch Ltd.); BA144519 (showing, on 6/25/01, Two Mile Ranch Ltd. wired \$1 million to the U.S. management trust); and BA144519; PSI\_ED00022592 (showing, on 6/25/01, the U.S. management trust wired \$1 million (\$500,000 each) to the Colorado LLCs).

trust.<sup>1115</sup> In October 2002, Yurta Faf of the Bessie Trust wired \$2.5 million directly to the U.S. management trust.<sup>1116</sup> In December 2003, Pops LLC, a Cayman corporation owned by the Bessie Trust and associated with one of Sam Wyly's daughters, wired \$1.5 million directly to the U.S. management trust, while Bubba LLC, a Cayman corporation associated with another of his daughters, wired \$900,000.<sup>1117</sup> These and other offshore funds were spent to purchase development rights for the property; construct multiple residences, roads, power and water systems, landscaping, and other improvements; as well as pay for maintenance and other operational costs associated with the ranch.

Rosemary's Circle R Ranch is an example of U.S. real estate that was bought and paid for primarily with offshore dollars, and used additional offshore funds to provide Wyly family members with rent-free, customized, multi-million-dollar homes for their personal use. The millions of offshore dollars spent on this property, the fact that the funds requested by a trust protector were invariably provided within days of a request, and the contribution of multiple offshore trusts associated with Sam Wyly to the financing of these real estate costs, provide additional evidence of the extent of Wyly influence over the offshore trusts.

### (c) LL Ranch

The LL Ranch is a 26-acre Colorado property that was transferred in a sham "sale" from one Wyly-related entity to another, in order to bring \$4.29 million in offshore dollars into the United States for the personal use of Charles Wyly family members. After this sham sale was completed in 2001, another \$1.9 million in offshore funds paid for 98 percent of the property's operating and construction costs. Altogether, from 2001 to 2004, about \$6.2 million in offshore dollars were transferred to the United States in connection with this property.<sup>1118</sup>

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<sup>1115</sup> See BA\_PSI-W016896 (showing, on 5/30/02, Two Mile Ranch Ltd. wired \$4 million to the U.S. management trust); and BA\_PSI-W016898 (showing, on 6/4/02, the U.S. management trust wired \$4 million (\$2 million each) to the Colorado LLCs). It is unclear where the IOM corporation acquired these funds; possibly they were provided by Yurta Faf.

<sup>1116</sup> See BA\_PSI-W016902 (showing, on 10/22/02, Yurta Faf wired \$2.5 million to the U.S. management trust); and BA\_PSI-W016904 (showing, on 11/6/02, the U.S. management trust wired \$2.5 million (\$1.25 million each) to the Colorado LLCs).

<sup>1117</sup> See BA\_PSI-W016924 (showing, on 12/23/03, Pops LLC wired \$1.5 million to the U.S. management trust); BA\_PSI-W016925 (showing, on 12/23/03, the U.S. management trust wired \$1.5 million (\$750,000 each) to the Colorado LLCs); BA\_PSI-W016925 (showing, on 12/24/03, Bubba LLC wired \$900,000 to the U.S. management trust); and BA\_PSI-W016926 (showing, on 1/26/04, the U.S. management trust wired \$850,000 (\$425,000 each) to the LLCs).

<sup>1118</sup> See chart entitled, "LL Ranch Offshore Funding," prepared by the Subcommittee Minority Staff (listing eight wire transfers from IOM entities that, from 3/2/01 to 11/5/04,

The LL Ranch is a 26-acre wooded site in a prestigious neighborhood near Aspen, Colorado.<sup>1119</sup> It was purchased in 1996, from a third party, for \$2.4 million by a Texas partnership, Little Woody Ltd., whose partners were Charles Wyly and his four children.<sup>1120</sup> Working with architects and builders, the Wyly family extensively remodeled the residence, expanding it to more than 8,000 square feet.<sup>1121</sup> There is no evidence that the property was ever rented to a third party.

In late 1999, Charles Wyly apparently began to consider selling several real estate properties used by his family to the Wyly “offshore system” in order to bring offshore funds into the United States.<sup>1122</sup> For example, an October 8, 1999 email from Ms. Boucher to Ms. Hennington on “CW property acquisition” stated: “My understanding is that shortly we are looking to sell four properties to the offshore system.”<sup>1123</sup> The documentation shows that Mr. Wyly personally selected the properties to be “sold” and determined the timing

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transferred \$6.2 million into the United States to be spent on this real estate).

<sup>1119</sup> See, e.g., 3/22/99 Uniform Residential Appraisal Report (BA143744-45). This property is sometimes referred to in the documentation as “Little Woody” or “Little Woody Creek Ranch,” but to avoid confusion with another 1999 purchase of what was then known as the Woody Creek Ranch (now known as Rosemary’s Circle R Ranch), this property will be referred to by another name sometimes used for it, the LL Ranch. See, e.g., PSI\_ED00000053.

<sup>1120</sup> See, e.g., 1996 General Warranty Deed (BA143746); 2000 appraisal report (BA143715); PSI00045950-54 (11/96 financial statements of Mr. Wyly and his four children listing realty purchase); PSI00117308-09, 117305 (describing 1996 purchase). The general partner of Little Woody Ltd. (Texas) was the Charles J. Wyly, Jr. Revocable Trust (BA143988), while the limited partners were the domestic trusts of his four children (PSI00043790, 30649). Mr. Wyly’s domestic trust had a 10 percent ownership interest in the partnership, while each of the children’s domestic trusts had a 22.5 percent interest. See, e.g., PSI00012101, 03, 05, 06, 07, 09, 11, 12, 14; 25341-44; 25417, 20, 24-27; 30648-49; 43790; 45951-54. It is possible that \$1.5 million in offshore funds were used to help purchase the property in 1996, and pay for some of its construction costs. See, e.g., August 1996 emails discussing offshore trustee approval of a \$1.5 million loan and second mortgage on the property (PSI00117305, 117308-09, 129440).

<sup>1121</sup> See, e.g., HST PSI000643-44 (8/12/99 list of property improvements from 10/24/96 until 4/15/99, at a total cost of \$3.8 million); BA144023 (identifying construction variances); BA143745 (3/22/99 appraisal report states: “The subject is in effectively new condition following its total remodeling and expansion.”); BA143718 (11/28/00 appraisal report states: “Mr. Wyly has largely gutted, remodeled, and expanded the home.”).

<sup>1122</sup> Because Charles Wyly asserted his Constitutional rights and did not participate in an interview, the Subcommittee was unable to ask him about the documents suggesting the existence of this plan, indicating he initiated this real estate transaction, or describing other information related to this matter. The same is true for the other real estate transactions.

<sup>1123</sup> PSI\_ED00000266. See also, e.g., 11/9/99 document entitled, “Trustee Meetings,” (MAV007783)(listing three “Real Estate acquisitions planned for 1<sup>st</sup> quarter 2000,” all of which involved properties controlled by the Charles Wyly family).

of the “sales,” postponing the LL Ranch transaction several times until 2001.<sup>1124</sup> On February 28, 2001, Ms. Hennington wrote to Ms. Boucher:

“I was talking to Charles yesterday and he was kind of thinking out loud on some stuff. He was talking about use of off-shore cash and was using the following for planning – thought I would pass it along even though he was just thinking.

First Dallas –	\$10.5 future commi[t]ments (Brazos, FDV, ?)
955 Little Woody –	\$10.2 (Charles and Dee home in Aspen)
Little Woody –	\$4.5 (next week deal)
Sport Horses –	\$3.0 (capital improvements)
Jennifer and Jim –	\$4.0 (new house)
Charity –	??? ...

He was saying that these things would use about half of his current available cash off-shore.”<sup>1125</sup>

The statement that Mr. Wyly was discussing uses for “his” available offshore cash is added evidence of the ability of the Wylys to direct use of the offshore dollars.

The actual “sale” of the LL Ranch took place about one month later on March 30, 2001, but was made effective as of March 5, 2001.<sup>1126</sup> The transaction was handled by the private banking department of Bank of America. Little Woody Ltd. (Texas) “sold” the LL Ranch to another Wyly-related entity, Little Woody LLC, for \$7.5 million. When asked why the property was transferred from one Wyly-related entity to

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<sup>1124</sup> See, e.g., 10/11/99 email from Ms. Hennington to Ms. Boucher (PSI\_ED00000266)(“In my discussions with Charles last week, he said due to the option sale earlier this month that the sale of the properties was not as time sensitive.”); 10/12/99 email on “CW real estate” discussing where to obtain the funds for the transactions (PSI\_ED00000267)(“Shari – Do you think we should sit down with Charles again and make sure he wants to go forward with everything”); PSI\_ED00000296-99, 317-19 (additional planning for the LL Ranch sale which does not, in the end, take place in 1999 or 2000); 10/16/00 email from Ms. Boucher to Ms. Robertson and others (MAV008220-21)(“We put together all documentation to sell this property to an IOM company last November/December. Charles has asked us to proceed once again and effect the sale.”); PSI\_ED00005218, 5295, 5361, 5390-91, 30527 (additional 2001 planning for LL Ranch sale).

<sup>1125</sup> (PSI\_ED00005370). The reference to “Little Woody” and the “next week deal” was to the property also known as the LL Ranch.

<sup>1126</sup> See closing documentation (BA143962-67); Pitkin County Assessor/Treasurer online Parcel Detail Information.

another, Ms. Hennington answered with one word: “Liquidity.” She indicated that the purpose of the transaction was to provide the Wylys with cash to use in domestic endeavors during 2001.<sup>1127</sup>

The entity that became the owner of record for the property, Little Woody LLC, was a Colorado limited liability corporation.<sup>1128</sup> This LLC was wholly owned for the first month by Little Woody Creek Ranch Ltd. (LWCRL), the Isle of Man corporation established to serve as the funding gateway for the LL Ranch.<sup>1129</sup> LWCRL was wholly owned by the 1994 Tyler Trust associated with Charles Wyly.<sup>1130</sup> A month after Little Woody LLC was established, LWCRL contributed the corporation to a newly established U.S. management trust set up to manage the LL Ranch.<sup>1131</sup>

This U.S. management trust, called the Little Woody Management Trust, had three grantors, Charles Wyly’s daughter Emily, his daughter Jennifer, and LWCRL.<sup>1132</sup> Emily obtained a “trust share” of 1 percent, Jennifer obtained another 1 percent, and LWCRL, the IOM corporation, obtained a “trust share” of 98 percent.<sup>1133</sup> In accordance with this arrangement, from 2001 until 2004, the documents show that LWCRL contributed 98 percent of the funds transferred to the U.S. management trust, while the Wyly daughters together contributed 2 percent.<sup>1134</sup> By

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<sup>1127</sup> Subcommittee interview of Ms. Hennington (4/26/06).

<sup>1128</sup> See 10/22/99 Colorado certificate of incorporation and articles of organization (BA060702-03) (showing Little Woody LLC was formed with a single manager, Charles Wyly).

<sup>1129</sup> See, e.g., BA060700-01 (showing the single original owner of Little Woody LLC was the IOM corporation, LWCRL).

<sup>1130</sup> See, e.g., Sept. 2003 Cash Report (PSI00040534)(listing Tyler Trust’s subsidiaries); 10/31/02 financial report for the Tyler Trust (PSI00078301)(listing its subsidiaries); PSI\_ED00024964.

<sup>1131</sup> See, e.g., BA060700-01 (showing the single original owner of Little Woody LLC was the IOM corporation, LWCRL, later replaced by the U.S. management trust). See also 11/30/99 U.S. management trust agreement (BA\_PSI-W011806-33). The initial trustees were Mr. French and Ms. Robertson, later replaced by Charles Wyly’s son-in-law, Donald Miller.

<sup>1132</sup> See U.S. trust agreement (BA PSI-W011806-33). At the time of the transaction, these two daughters apparently made personal use of the house. See 10/16/00 email from Ms. Boucher to Ms. Robertson and others (MAV008220-21)(“This is the house that Emily and Jennifer use.”)

<sup>1133</sup> See trust agreement (BA PSI-W011806-33). Initially, the two daughters each contributed \$200 to obtain a 1 percent trust share, while LWCRL contributed \$19,600 for a 98 percent trust share.

<sup>1134</sup> See, e.g., 12/31/02 “Working Trial Balance” for the U.S. management trust (PSI\_ED00062247) (showing the IOM corporation had contributed \$4.6 million or 98 percent of the trust’s capital, while Charles Wyly’s two daughters had each contributed about \$47,000); 9/30/02 financial statement for the U.S. management trust, LWMT (PSI00051138)(showing

the end of 2004, for example, internal Wyly records indicate that the LWCRL had contributed a net total of \$4.8 million to the U.S. management trust, while each daughter had contributed about \$48,000.<sup>1135</sup>

To purchase the LL Ranch for \$7.5 million, Little Woody LLC agreed to assume an existing mortgage of \$3.8 million on the property, and to pay Little Woody Ltd. (Texas) the remaining “sales price” of \$3.65 million. The LLC also agreed to pay \$646,000 for furnishings and artwork already in the house, for a total cash payment of about \$4.29 million.<sup>1136</sup> Little Woody LLC obtained the necessary funds from offshore. Bank documents show that, on March 2, 2001, a few weeks before the “sale,” the IOM corporation, LWCRL, wired \$4.5 million to the U.S. management trust which then wired \$4.5 million to Little Woody LLC.<sup>1137</sup>

On the day of the closing, March 30, 2001, Little Woody LLC issued wire transfers totaling about \$4.29 million to “purchase” the house, its furnishings, and artwork.<sup>1138</sup> A few weeks later, Little Woody Ltd. (Texas) transferred the same amount, \$4.29 million, to the personal, domestic trusts of Charles Wyly and his four children, in amounts reflecting their proportionate ownership interests in the partnership.<sup>1139</sup>

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similar figures); 12/31/03 “Working Trial Balance” for the U.S. management trust (PSI\_ED00059481)(showing the IOM corporation had contributed \$4.7 million or 98 percent of the trust’s capital, while Charles Wyly’s two daughters had each contributed about \$48,000).

<sup>1135</sup> 12/31/04 “Working Trial Balance” for U.S. management trust (PSI\_ED00019967). See also chart entitled, “LL Ranch Funding Structure,” prepared by the Subcommittee Minority Staff.

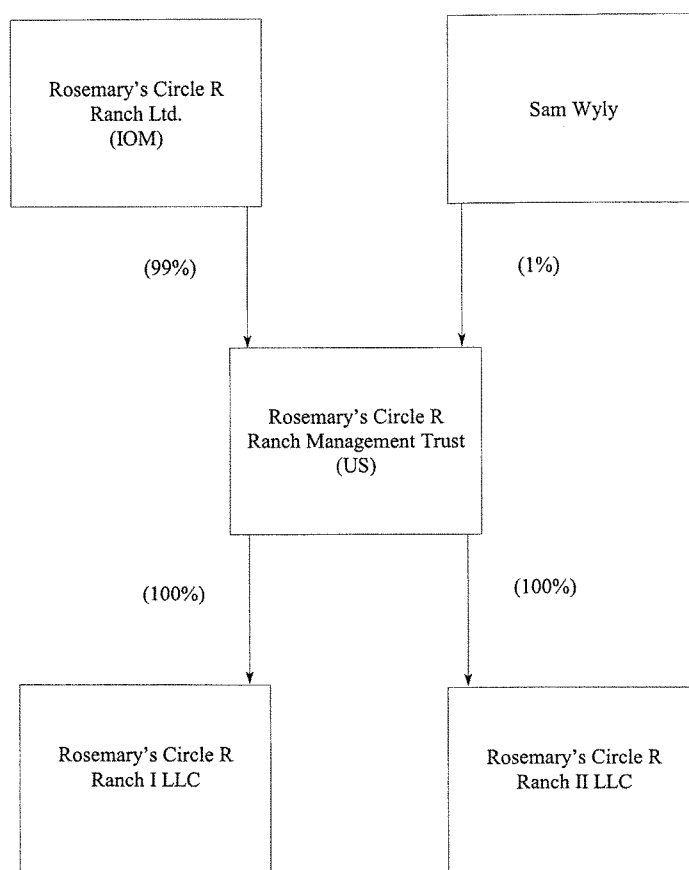
<sup>1136</sup> See, e.g., 1/31/01 Wyly Partnerships financial statement for this property, referred to as “Little Woody” (PSI00043790) (showing real estate had a book value of \$6.5 million, and furnishings and art with a book value of \$646,339, resulting in an overall total book value of \$7.2 million); Loan Assumption Agreement (BA143981-93, at 88)(showing Little Woody LLC assumed \$3.8 million mortgage, and Charles Wyly signed the Loan Assumption Agreement on behalf of both entities, as manager of the LLC and as trustee of the general partner of Little Woody Ltd.).

<sup>1137</sup> See, e.g., PSI00025359, 68 (showing, on 3/2/01, LWCRL wired \$4.5 million to the U.S. management trust); PSI00025359, 37309; BA PSI-W004464 (showing, on 3/2/01, the U.S. management trust wired \$4.5 million to Little Woody LLC). It is unclear how LWCRL itself obtained these funds.

<sup>1138</sup> See wire transfer records (BA PSI-W004464)(showing Little Woody LLC wired \$3,650,823 to Steward Title of Aspen, presumably as part of the closing, and wired \$646,339 to Little Woody Ltd. (Texas), an amount exactly equal to the value of the existing furnishings and artwork in the house, for a total of about \$4.29 million); BA150424-25, PSI00024367, PSI00013498 (showing that Little Woody Ltd. (Texas) received a credit of \$3,643,227, presumably from the closing, and a credit of \$646,339 from Little Woody LLC).

<sup>1139</sup> See BA150428; PSI00025341-44 (showing that, on 4/17/01, Little Woody Ltd. (Texas) wired the following amounts totaling \$4,290,000:



**Rosemary's Circle R Ranch Funding Structure**

Prepared by Permanent Subcommittee on Investigations, Minority Staff

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\$429,000 wired to Charles Wyly CP  
\$865,250 wired to Martha Wyly Trust  
\$965,250 wired to Charles Wyly III Trust  
\$965,250 wired to Emily Wyly Trust  
\$965,250 wired to Jennifer Wyly Trust”);  
BA150425; and PSI00025363 (showing that, on 3/22/01, Little Woody Ltd. (Texas) had wired \$100,000 to the Martha Wyly Trust).

# Rosemary's Circle R Ranch Offshore Funding

Date	By Order Of	Amount	To	Date	Amount	To
10/4/1999	Devotion, Ltd	\$10,200,000	Rosemary's Circle R Ranch Mgmt Trust	10/5/1999	\$5,000,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	10/5/1999	\$5,000,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	11/5/1999	\$50,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	11/5/1999	\$50,000	Rosemary's Circle R Ranch II, LLC
12/11/1999	Rosemary's Circle R Ranch, Ltd	\$85,000	Rosemary's Circle R Ranch Mgmt Trust			
12/11/1999	Rosemary's Circle R Ranch, Ltd	\$300,000	Rosemary's Circle R Ranch Mgmt Trust			
3/7/2000	Rosemary's Circle R Ranch, Ltd	\$500,000	Rosemary's Circle R Ranch Mgmt Trust	4/7/2000	\$50,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	4/7/2000	\$50,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	5/5/2000	\$50,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	5/5/2000	\$50,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	5/9/2000	\$400,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	5/9/2000	\$400,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	5/11/2000	\$50,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	5/11/2000	\$50,000	Rosemary's Circle R Ranch II, LLC
9/28/2000	Rosemary's Circle R Ranch, Ltd	\$750,000	Rosemary's Circle R Ranch Mgmt Trust	10/2/2000	\$100,000	Rosemary's Circle R Ranch I, LLC

Prepared by Permanent Subcommittee on Investigations Staff

# Rosemary's Circle R Ranch Offshore Funding

Date	By Order Of	Amount	To	Date	Amount	To
1/16/2001	Rosemary's Circle R Ranch, Ltd	\$300,000	Rosemary's Circle R Ranch Mgmt Trust	10/2/2000	\$100,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	11/2/2000	\$125,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	11/2/2000	\$125,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	12/12/2000	\$125,000	Rosemary's Circle R Ranch I, LLC
1/16/2001	Rosemary's Circle R Ranch, Ltd	\$300,000	Rosemary's Circle R Ranch Mgmt Trust	12/12/2000	\$125,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	1/16/2001	\$150,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	1/16/2001	\$150,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	2/20/2001	\$200,000	Rosemary's Circle R Ranch I, LLC
2/16/2001	Rosemary's Circle R Ranch, Ltd	\$1,200,000	Rosemary's Circle R Ranch Mgmt Trust	2/20/2001	\$200,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	3/9/2001	\$180,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	3/9/2001	\$180,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	3/19/2001	\$50,000	Rosemary's Circle R Ranch I, LLC
2/16/2001	Rosemary's Circle R Ranch, Ltd	\$1,200,000	Rosemary's Circle R Ranch Mgmt Trust	3/19/2001	\$50,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	4/5/2001	\$200,000	Rosemary's Circle R Ranch I, LLC

## Rosemary's Circle R Ranch Offshore Funding

Date	By Order Of	Amount	To	Date	Amount	To
4/19/2001	Rosemary's Circle R Ranch, Ltd	\$2,000,000	Rosemary's Circle R Ranch Mgmt Trust	4/5/2001	\$200,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	4/19/2001	\$250,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	4/19/2001	\$250,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	5/8/2001	\$600,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	5/8/2001	\$600,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	5/11/2001	\$100,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	5/11/2001	\$100,000	Rosemary's Circle R Ranch II, LLC
6/25/2001	Rosemary's Circle R Ranch, Ltd	\$1,000,000	Rosemary's Circle R Ranch Mgmt Trust	6/25/2001	\$500,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	6/25/2001	\$500,000	Rosemary's Circle R Ranch II, LLC
8/17/2001	Rosemary's Circle R Ranch, Ltd	\$1,000,000	Rosemary's Circle R Ranch Mgmt Trust	8/20/2001	\$510,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	8/20/2001	\$510,000	Rosemary's Circle R Ranch II, LLC
9/11/2001	Rosemary's Circle R Ranch, Ltd	\$3,600,000	Rosemary's Circle R Ranch Mgmt Trust	9/13/2001	\$350,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	9/13/2001	\$350,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	10/4/2001	\$1,250,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	10/4/2001	\$1,250,000	Rosemary's Circle R Ranch II, LLC

Prepared by Permanent Subcommittee on Investigations Staff

# Rosemary's Circle R Ranch Offshore Funding

Date	By Order Of	Amount	To	Date	Amount	To
5/30/2002	Rosemary's Circle R Ranch, Ltd	\$4,000,000	Rosemary's Circle R Ranch Mgmt Trust	6/4/2002	\$2,000,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	6/4/2002	\$2,000,000	Rosemary's Circle R Ranch II, LLC
10/22/2002	Yurta Faf, Ltd	\$2,500,000	Rosemary's Circle R Ranch Mgmt Trust	11/6/2002	\$1,250,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	11/6/2002	\$1,250,000	Rosemary's Circle R Ranch II, LLC
4/2/2003	Rosemary's Circle R Ranch, Ltd	\$900,000	Rosemary's Circle R Ranch Mgmt Trust	4/3/2003	\$450,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	4/3/2003	\$450,000	Rosemary's Circle R Ranch II, LLC
5/9/2003	Rosemary's Circle R Ranch, Ltd	\$900,000	Rosemary's Circle R Ranch Mgmt Trust	5/16/2003	\$450,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	5/16/2003	\$450,000	Rosemary's Circle R Ranch II, LLC
7/14/2003	Rosemary's Circle R Ranch, Ltd	\$900,000	Rosemary's Circle R Ranch Mgmt Trust	7/14/2003	\$450,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	7/14/2003	\$450,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust			Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust			Rosemary's Circle R Ranch II, LLC
8/14/2003	Rosemary's Circle R Ranch, Ltd	\$720,000	Rosemary's Circle R Ranch Mgmt Trust	8/18/2003	\$360,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	8/18/2003	\$360,000	Rosemary's Circle R Ranch II, LLC

### Rosemary's Circle R Ranch Offshore Funding

Date	By Order Of	Amount	To	Date	Amount	To
8/22/2003	Rosemary's Circle R Ranch, Ltd	\$180,000	Rosemary's Circle R Ranch Mgmt Trust	9/3/2003	\$100,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	9/3/2003	\$100,000	Rosemary's Circle R Ranch II, LLC
9/19/2003	Rosemary's Circle R Ranch, Ltd	\$350,000	Rosemary's Circle R Ranch Mgmt Trust	9/24/2003	\$175,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	9/24/2003	\$175,000	Rosemary's Circle R Ranch II, LLC
10/2/2003	Rosemary's Circle R Ranch, Ltd	\$2,000,000	Rosemary's Circle R Ranch Mgmt Trust	10/7/2003	\$1,000,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	10/7/2003	\$1,000,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	11/12/2003	\$50,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	11/12/2003	\$50,000	Rosemary's Circle R Ranch II, LLC
11/20/2003	Rosemary's Circle R Ranch, Ltd	\$500,000	Rosemary's Circle R Ranch Mgmt Trust	11/20/2003	\$250,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	11/20/2003	\$250,000	Rosemary's Circle R Ranch II, LLC
12/3/2003	Rosemary's Circle R Ranch, Ltd	\$500,000	Rosemary's Circle R Ranch Mgmt Trust	12/9/2003	\$250,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	12/9/2003	\$250,000	Rosemary's Circle R Ranch II, LLC
12/19/2003	Rosemary's Circle R Ranch, Ltd	\$500,000	Rosemary's Circle R Ranch Mgmt Trust	12/23/2003	\$250,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	12/23/2003	\$250,000	Rosemary's Circle R Ranch II, LLC
12/23/2003	Pops, LLC	\$1,500,000	Rosemary's Circle R Ranch Mgmt Trust	12/23/2003	\$750,000	Rosemary's Circle R Ranch I, LLC
						Rosemary's Circle R Ranch II, LLC

Prepared by Permanent Subcommittee on Investigations Staff

# Rosemary's Circle R Ranch Offshore Funding

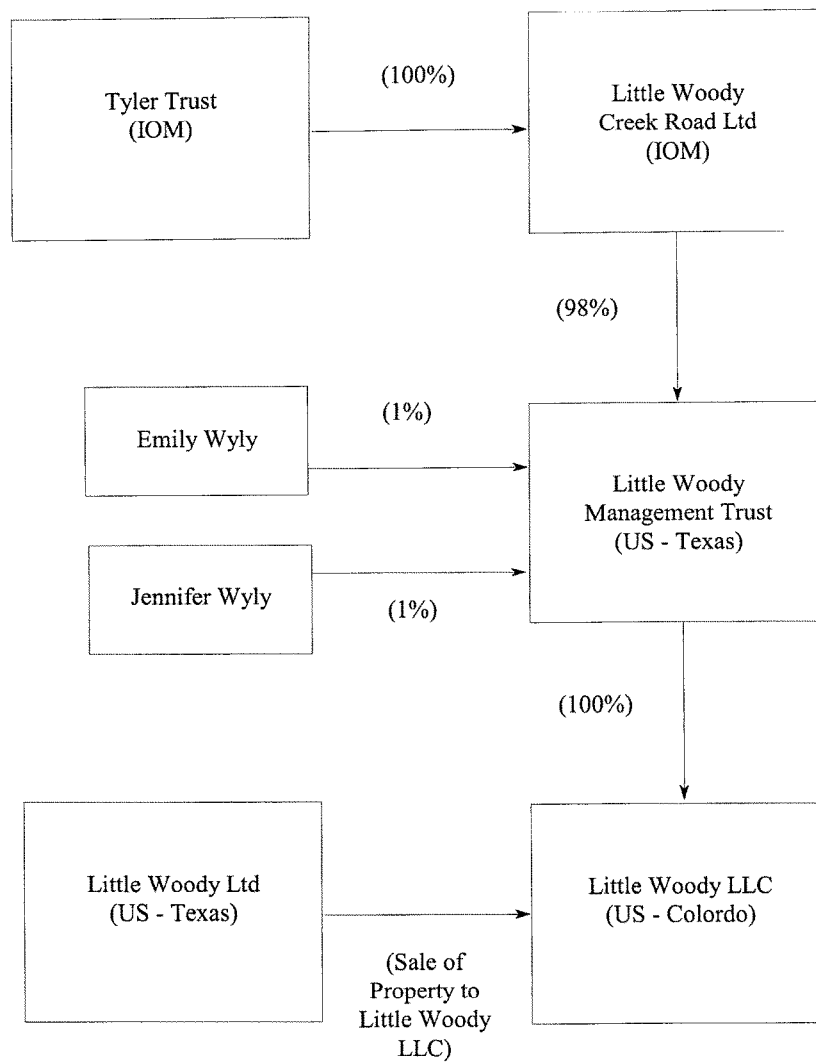
Date	By Order Of	Amount	To	Date	Amount	To
12/24/2003	Bubba, LLC	\$900,000	Rosemary's Circle R Ranch Mgmt Trust	12/23/2003	\$750,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	1/26/2004	\$425,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	1/26/2004	\$425,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	2/11/2004	\$50,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	2/11/2004	\$50,000	Rosemary's Circle R Ranch II, LLC
2/23/2004	Rosemary's Circle R Ranch, Ltd	\$900,000	Rosemary's Circle R Ranch Mgmt Trust	2/27/2004	\$450,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	2/27/2004	\$450,000	Rosemary's Circle R Ranch II, LLC
3/17/2004	Rosemary's Circle R Ranch, Ltd	\$600,000	Rosemary's Circle R Ranch Mgmt Trust	3/31/2004	\$300,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	3/31/2004	\$300,000	Rosemary's Circle R Ranch II, LLC
4/23/2004	Rosemary's Circle R Ranch, Ltd	\$300,000	Rosemary's Circle R Ranch Mgmt Trust	4/27/2004	\$150,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	4/27/2004	\$150,000	Rosemary's Circle R Ranch II, LLC
5/6/2004	Rosemary's Circle R Ranch, Ltd	\$800,000	Rosemary's Circle R Ranch Mgmt Trust	5/6/2004	\$400,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	5/6/2004	\$400,000	Rosemary's Circle R Ranch II, LLC
5/16/2004	Rosemary's Circle R Ranch, Ltd	\$900,000	Rosemary's Circle R Ranch Mgmt Trust	5/20/2004	\$450,000	Rosemary's Circle R Ranch I, LLC

Prepared by Permanent Subcommittee on Investigations Staff

## Rosemary's Circle R Ranch Offshore Funding

Date	By Order Of	Amount	To	Date	Amount	To
6/23/2004	Rosemary's Circle R Ranch, Ltd	\$300,000	Rosemary's Circle R Ranch Mgmt Trust	5/20/2004	\$450,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	6/25/2004	\$150,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	6/25/2004	\$150,000	Rosemary's Circle R Ranch II, LLC
7/15/2004	Rosemary's Circle R Ranch, Ltd	\$500,000	Rosemary's Circle R Ranch Mgmt Trust	7/16/2004	\$250,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	7/16/2004	\$250,000	Rosemary's Circle R Ranch II, LLC
8/3/2004	Rosemary's Circle R Ranch, Ltd	\$3,000,000	Rosemary's Circle R Ranch Mgmt Trust	8/4/2004	\$500,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	8/4/2004	\$500,000	Rosemary's Circle R Ranch II, LLC
			Rosemary's Circle R Ranch Mgmt Trust	8/5/2004	\$1,000,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	8/5/2004	\$1,000,000	Rosemary's Circle R Ranch II, LLC
1/27/2005	Rosemary's Circle R Ranch, Ltd	\$2,000,000	Rosemary's Circle R Ranch Mgmt Trust	2/4/2005	\$1,000,000	Rosemary's Circle R Ranch I, LLC
			Rosemary's Circle R Ranch Mgmt Trust	2/4/2005	\$1,000,000	Rosemary's Circle R Ranch II, LLC
<b>Circle R Total</b>		<b>\$46,585,000</b>			<b>\$46,400,000</b>	



**LL Ranch Funding Structure**

## LL Ranch Offshore Funding

Date	By Order Of	Amount	To	Date	Amount	To
3/2/2001	Little Woody Creek Road, Ltd.	\$4,500,000	Little Woody Management Trust	3/2/2001	\$4,500,000	Little Woody, LLC
8/16/2001	Little Woody Creek Road, Ltd.	\$200,000	Little Woody Management Trust	8/28/2001	\$200,000	Little Woody, LLC
<b>2001 TOTAL</b>		<b>\$4,700,000</b>			<b>\$4,700,000</b>	
2/12/2002	Little Woody Creek Road, Ltd.	\$200,000	Little Woody Management Trust	2/22/2002	\$200,000	Little Woody, LLC
7/25/2002	Little Woody Creek Road, Ltd.	\$300,000	Little Woody Management Trust	7/30/2002	\$300,000	Little Woody, LLC
<b>2002 TOTAL</b>		<b>\$500,000</b>			<b>\$500,000</b>	
3/13/2003	Little Woody Creek Road, Ltd.	\$250,000	Little Woody Management Trust	3/13/2003	\$250,000	Little Woody, LLC
9/11/2003	Little Woody Creek Road, Ltd.	\$250,000	Little Woody Management Trust	9/11/2003	\$250,000	Little Woody, LLC
<b>2003 TOTAL</b>		<b>\$500,000</b>			<b>\$500,000</b>	
3/10/2004	Little Woody Creek Road, Ltd.	\$250,000	Little Woody Management Trust	3/18/2004	\$10,000	Little Woody, LLC
				3/31/2004	\$50,000	Little Woody, LLC
				4/22/2004	\$200,000	Little Woody, LLC
11/5/2004	Little Woody Creek Road, Ltd.	\$250,000	Little Woody Management Trust	9/22/2004	\$45,000	Little Woody, LLC
				12/2/2004	\$200,000	Little Woody, LLC
<b>2004 TOTAL</b>		<b>\$500,000</b>			<b>\$505,000</b>	
<b>GRAND TOTAL</b>		<b>\$6,200,000</b>			<b>\$6,205,000</b>	

After the purchase in March 2001, every six months or so, the Wyly family office requested additional offshore funds to operate the property.<sup>1140</sup> In response, the IOM corporation, LWCRL, wired at least \$200,000 to the U.S. management trust, LWMT. LWMT, in turn, wired the funds to Little Woody LLC, which then used the funds to pay for construction projects, furnishings, utilities, real estate taxes, and other expenses related to the LL Ranch. In a little over 3 years, from August 2001 to December 2004, more than \$1.9 million in offshore funds were spent on the upkeep and improvement of the LL Ranch.<sup>1141</sup>

The LL Ranch provides an example of a sham real estate “sale” used to bring \$4.29 million in offshore cash into the United States for the personal use of Wyly family members. Although the ranch changed hands on paper, moving from one Wyly-related entity to another, in reality, the property apparently continued to be used by the same Wyly family members in the same way both before and after the sales transaction. Another \$1.9 million in offshore money was used to pay the real estate’s operating expenses, providing Wyly family members with an almost cost-free, multi-million-dollar residence for their personal use. Altogether, about \$6.2 million in offshore dollars was spent on this property. The fact that the offshore trustees were willing to wire millions of dollars to be spent on this property and complied with funding requests within days provides additional proof that the Wyllys were able to direct the use of offshore dollars to advance their personal interests.

Analysis of three additional real estate transactions, involving Cottonwood Ventures, Stargate Horse Farm, and oceanside property in Malibu, California, raise commercial as well as residential property issues. These real estate transactions are examined in Appendix 5.

#### **(d) Analysis of Issues**

The five real estate examples examined by the Subcommittee show how \$85 million in untaxed, offshore dollars were used to buy residential and commercial property in the United States; pay real estate maintenance, operating, and construction costs; and enable Wyly family members to enjoy, at minimal personal expense, residential and business

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<sup>1140</sup> See, e.g., 8/10/01 email requesting \$200,000 (PSI\_ED00006355-57, 67); 2/11/02 email requesting \$200,000 (PSI\_ED00004611); 7/15/02 email requesting \$300,000 (PSI\_ED00010261); 2/27/03 email requesting \$250,000 (PSI\_ED00005247); 9/8/03 email requesting \$250,000 (PSI\_ED00005974); 3/2/04 email requesting \$250,000 (PSI\_ED00006373); 4/26/05 email requesting \$200,000 (PSI\_ED00003251).

<sup>1141</sup> See chart entitled, “LL Ranch Offshore Funding,” prepared by the Subcommittee Minority Staff (listing wire transfers).

properties costing millions of dollars. In these instances, offshore dollars paid for 90 percent or more of the real estate costs. For example, of the \$45 million spent on Rosemary's Circle Ranch, all but \$434,000 was supplied from offshore. The examples also show how, in some instances, properties were used to justify sham real estate sales and loans that brought millions of offshore dollars into the United States for the Wyllys' personal use.

These real estate transactions provide additional proof that the Wyllys and their representatives were directing the use of the offshore assets. In the instances examined by the Subcommittee, the Wyllys chose the properties to be purchased or sold, determined the timing of the transactions, supervised construction and renovation projects, and made personal use of the real estate. They built homes, art galleries, and a state-of-the-art equestrian facility. Wyly representatives routinely requested offshore funds to pay the real estate costs, and the Wyly-related offshore trustees routinely complied. The Subcommittee saw no instance in which a trustee refused a request for funds; most funding requests were supplied within days. The Subcommittee also saw no instance in which an offshore trustee initiated a real estate transaction on its own. Instead, the offshore trustees routinely deferred to Wyly representatives, supplying funds whenever asked.

#### **(7) Spending Offshore Dollars on Artwork, Furnishings, and Jewelry**

During the thirteen years examined in this Report, at least \$30 million in untaxed, offshore dollars were spent to purchase furnishings, artwork, and jewelry for the apparent personal use of Wyly family members.<sup>1142</sup> Although the nominal owners of virtually all of these items were two offshore corporations, the evidence indicates that the artwork, furnishings, and jewelry were actually selected, held, and used by individual Wyly family members. These purchases are further evidence that the Wyllys were directing the use of trust assets, and that the offshore trusts were benefitting U.S. persons.

**Background.** From 1992 until 2005, numerous expensive works of art, rare documents and books, furniture, and jewelry were purchased

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<sup>1142</sup> The Subcommittee has identified 67 transactions in which a Wyly-related offshore entity paid for one or more items of furnishings, art, rare documents, books, or jewelry, using wire transfers which together total about \$29.9 million. See also 12/31/04 financial statement for "Global SW Family" (PSI\_ED00095232-33)(listing under "SW Foreign Total Family," an asset described as "Investments in Art, Jewelry, Collectibles & Furniture," with a fair market value of about \$20.9 million); and 12/31/04 financial statement prepared for "Global CW Family" (HST\_PSI006887)(listing the same asset and showing a fair market value of about \$7.2 million).

with Wyly-related offshore dollars. These purchases included, for example, a \$937,500 portrait of Benjamin Franklin,<sup>1143</sup> a \$13,000 French bronze chandelier,<sup>1144</sup> a \$162,000 bureau cabinet,<sup>1145</sup> \$721,000 in official documents from the presidency of Abraham Lincoln,<sup>1146</sup> a \$622,000 ruby,<sup>1147</sup> and a \$759,000 emerald necklace.<sup>1148</sup>

Although a number of Wyly-related offshore entities supplied funds for these purchases, almost all of the items were nominally owned by either Audubon Assets Ltd. (Audubon) or Soulieana Ltd. (Soulieana). Audubon, formerly named Fugue Ltd., is wholly owned by the Bessie Trust, a 1994 foreign grantor trust set up to benefit Sam Wyly and his family. Soulieana is wholly owned by the Tyler Trust, a 1994 foreign grantor trust set up to benefit Charles Wyly and his family. Both corporations are shell operations, with no employees or offices of their own. Since 1995, many of their transactions have been handled for a fee by the Irish Trust Company, working in tandem with the Wyly family office. The documents show that the key persons who handled these matters for Audubon and Soulieana during the period under examination were Ms. Boucher and Ms. MacInnis from the Irish Trust Company, and Ms. Hennington, Ms. Robertson, Ms. Alexander, and Ms. Westbrook from the Wyly family office.

Over the years, several other companies also provided the Wyly family with assistance in purchasing and transporting artworks and furnishings. One is a Texas corporation called Marguerite Theresa Green and Associates, Inc. (Green & Associates), an interior design firm

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<sup>1143</sup> See Senate00135 (invoice for “The Portrait of Benjamin Franklin” by David Martin); HG0213 (dating portrait to 1772). This painting was purchased in 1999, invoiced to Audubon Assets Ltd. (Senate00135), paid for by an offshore corporation, Richland Ltd. (Senate00150), and delivered to Cheryl Wyly in Aspen (Senate00138).

<sup>1144</sup> See PSI00078562 (invoice for 18-light French bronze chandelier). This light fixture was purchased in 1997, by Marguerite Theresa Green and Associates, for “Mr. Wyly’s bedroom,” and paid for by an offshore corporation, Soulieana Ltd.

<sup>1145</sup> See PSI00078568 (invoice for “George I Walnut ... Bureau Cabinet”). This cabinet was purchased in 1997, by Marguerite Theresa Green and Associates, and paid for by Soulieana Ltd.

<sup>1146</sup> See PSI-CHRIST00295 (invoice for “resolution for Amendment 13”). This document was purchased in 2002, as part of a larger collection of American historical documents. It was invoiced to Sam Wyly (PSI-CHRIST00295), paid for by Audubon Assets Ltd. (PSI-CHRIST00296), and delivered to Highland Stargate in Dallas (PSI-CHRIST00297-98).

<sup>1147</sup> See PSI\_ED00002658, 70 (emails describing ruby). The ruby is apparently held in the name of Audubon Assets Ltd.

<sup>1148</sup> See PSI-JEWEL00065 (invoice for necklace and matching ring). The necklace was purchased in 2000, described as “Sold to: Mr. Charles Wyly,” and paid for by Soulieana Ltd.

which handled purchases associated with the Charles Wyly family.<sup>1149</sup> Another is Michelangelo Investors LDC, a Cayman corporation which, on occasion, acted as an intermediary in some purchases associated with the Charles Wyly family.<sup>1150</sup> A third is the Elliott Yeary Gallery, the Colorado art gallery run by Sam Wyly's daughter, Kelly Wyly Elliott, and her business partner, Kristin Yeary. In 2002, Audubon named the Gallery as the "curator" of its art collection.<sup>1151</sup> In 2004, perhaps to forestall an argument that no legitimate business would allow a multi-million-dollar collection of art, rare documents, furnishings, and jewelry to reside at multiple locations with no tracking system, Audubon entered into formal "Possession Agreements" with Sam Wyly, his wife and children, identifying which Wyly family members had possession of which Audubon-owned pieces and stating that these persons were holding the items as "an agent" of Audubon.<sup>1152</sup> It is unclear whether Soulieana has an equivalent tracking system and set of custody agreements.<sup>1153</sup>

**Audubon and Soulieana Purchases.** On paper, the artwork, furnishings, and jewelry purchased by Audubon and Soulieana were held as investments intended to benefit the Bessie and Tyler Trusts. In reality, many of these purchases appear to have been made at the direction of Wyly family members and to have been treated not as trust investments, but as personal possessions intended for the use and

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<sup>1149</sup> See, e.g., Green & Associates invoices from 1997 to 1999 (PSI00078475-573).

<sup>1150</sup> See, e.g., Michelangelo invoice on 12/20/00 for multiple purchases of art and furnishings (PSI\_ED00005035-38); emails discussing this invoice (PSI\_ED00005039-41). See also 5/3/01 emails between Ms. Hennington and Ms. Boucher on Michelangelo's role (PSI\_ED00012663)(Ms. Hennington wrote: "Charles sent me an invoice for a painting he commissioned for \$30,000 with a note as to whether Souli[e]ana should pay. Someone put down a \$15,000 deposit .... Is it a problem to pay \$15,000 to a domestic entity and the rest to the gallery?" Ms. Boucher responded: "I don't like to pay direct to the domestic entity from offshore, but we have a company here called Michelangelo LDC that we can use as an intermediary to refund the deposit. We can assign or sell the commissioned work to Michelangelo and then assign it onto Soulieana Limited.").

<sup>1151</sup> 5/22/02 letter agreement between Audubon and Elliott Yeary Gallery (PSI00039349-50). See also HST\_PSI000001(referring to 5/22/02 agreement). Audubon may have also appointed the Gallery and Sam Wyly as "art consultants" authorized to assist in its purchases. See 12/14/04 letter from the law firm of Herrick, Feinstein, representing Hammer Galleries, to the Manhattan District Attorney's Office. (HG0005-06).

<sup>1152</sup> See, e.g., (PSI00078338-42)(possession agreement with Paragon Building/Kelly Wyly Elliott); (PSI00078361-67, 87-88)(possession agreement with Sam and Cheryl Wyly); (PSI00078418-22)(possession agreement with Kelly and Jason Elliott); (PSI0078428-32)(possession agreement with Laurie and David Mathews); (PSI00078439-43)(possession agreement with Lisa Wyly and John Graham).

<sup>1153</sup> See, e.g., 3/27/01 meeting agenda (PSI00110232-33)(discussing Soulieana possession agreements and completion of "schedules"). The Subcommittee has been unable, however, to locate any such agreements, and Ms. Hennington reported that she had no copies of them.

enjoyment of particular Wyly family members. The following examples illustrate these points.

**Investing in Art.** A painting purchased in 1996, called Noon Day Rest, demonstrates that some purchases of artwork were made at the insistence of Wyly family members despite trustee concerns. On July 10, 1996, Sotheby's issued an invoice to Cheryl Wyly for the purchase of Noon Day Rest for £155,500 or about \$240,000. (PSI00119266) Two weeks later, on July 15, 1996, the Bessie Trustee, then Lorne House, asked Sotheby's to change the invoice to charge Audubon for the cost of the painting. (PSI00119255, 57).

The story behind this invoicing change is as follows. On July 18, 1996, one week after the original invoice was issued naming Cheryl Wyly as the purchaser of the painting, Michael French and Sharyl Robertson, as trust protectors for the Wyly offshore trusts, wrote to Lorne House, then the Bessie Trust trustee, recommending that its subsidiary, Audubon, sell certain Treasury Bills, use the funds to purchase the painting, and ship it to Dallas. (PSI00119258).

The managing director of Lorne House, Ronald Buchanan, did not immediately agree. Instead, in an email sent the next day, he wrote: "[W]e would draw to the Committee of Protectors' attention that they are recommending the substitution of a very safe, income-producing asset by one which might be difficult to sell at a profit at short notice and which generates no income." He observed that Audubon was also being asked to buy the painting at "222% of the pre-auction estimated price." He asked the protectors to confirm that they "do not believe that the beneficiaries will need the income which the proposed purchase price could have generated in the near or medium-term future," and "the painting will gain appreciably more in value than would Treasury Bills." (PSI00119265).

Mr. French responded the same day, July 19, 1996, with a sharply worded email. He stated that the Bessie Trust agreement "clearly authorizes a purchase of personal property for personal use or enjoyment in specie by any beneficiary."<sup>1154</sup> (PSI00119259; emphasis in original). He continued:

"Unless there is a clear and unequivocal requirement of IOM law (which I doubt), that any such purchase that is

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<sup>1154</sup> Mr. French sent a copy of the trust agreement language which states: "The Trustees shall have power at their absolute discretion ... to invest in the purchase of ... chattels for use or occupation or otherwise for enjoyment in specie by any Beneficiary." (PSI00119260-61).

specifically authorized by the trust agreement must nevertheless be weighed against the investment returns that could otherwise be obtained on the funds, then I must assume that this transaction is authorized and lawful. If you wish to search for such a legal prohibition, you should do so at your own expense and not that of the Trust. ... We need to resolve this issue at once.”

On July 22, 1996, Mr. Buchanan wrote to Ms. Boucher requesting “written confirmation that the Committee of Protectors have considered the points raised ... and ... continue to recommend that the Trustees should buy the ... painting.” (PSI00117450; see also 117449). On July 24, 1996, Mr. French wrote to Mr. Buchanan proposing that Sam Wyly provide the Trustees with a letter stating that, with respect to the £155,500 needed to buy the painting, “neither I, nor my spouse nor any of my issue has any foreseeable need for such funds or any such income thereon.” (PSI00119263-64) Mr. Buchanan replied on July 25, 1996, that the proposed letter would “do very well” and apologized if the trustees had “appeared excessively obdurate on this matter but, as you know, the legal responsibilities of a trustee are more onerous than those of a banker or portfolio manager.” (PSI00119262). Later the same day, Lorne House sent a letter to Sotheby’s confirming that the painting should be invoiced to Audubon. (PSI00119257). Three days after that, on July 29, 2006, the Trustees formally approved the purchase of the painting by the Bessie Trust “in accordance with the wishes of the ... Protectors.” (PSI00117548).

The Noon Day Rest documents show that it was the Wylys who made the initial decision to purchase the painting and, only after purchasing it, asked Audubon to become the nominal owner and pay the cost. The email exchange shows further that the Bessie Trustee had reservations about buying the painting, due to concerns that it was overpriced, might be difficult to sell at a profit, and would not appreciate in value compared to other investments. It was only after the protectors pressed for approval and presented a letter from Sam Wyly, that the Trustee agreed to buy the painting. The painting was shipped to Dallas.<sup>1155</sup>

**Gifting An Audubon Painting.** Another painting, Off in the Distance, provides further evidence that the Wyly family, rather than the Bessie Trust, exercised true direction over the Audubon art collection.

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<sup>1155</sup> See also 11/25/96 fax from Mr. French to Mr. Buchanan (PSI00121101-03) (providing similar assurances to convince the Bessie Trust to purchase five additional paintings at a total cost of about \$1.4 million).



On December 23, 2004, Ms. Alexander of the Wyly family office informed Ms. Boucher that Sam Wyly had “just gifted” Off in the Distance “to a friend,” and asked whether the painting was owned by Audubon. (PSI00038425). On December 28, 2004, Ms. Boucher responded that the painting was, in fact, owned by Audubon and the original cost was \$2,520. She asked whether there was a “similarly valued piece owned domestically that the trustees could consider swapping” for the painting that had been given away. (*Id.*). On January 5, 2005, Ms. Alexander identified two paintings that together had a similar value to the painting that Mr. Wyly had given away. Ms. Boucher replied “sounds good – I think Elliott Yeary Gallery as curator for the collection should write a letter or give a notice to Audubon Assets of the exchange” by sending an email to the current Trustee of the Bessie Trust, IFG International. (*Id.*).

Later the same day, Ms. Alexander told Ms. Boucher that she needed to obtain more information on the two paintings she had identified. Ms. Boucher replied that she had “cleared the concept on my end so we are good to go when we find substitution.” (PSI\_ED00034877). About two weeks later, on January 18, 2005, Ms. Alexander identified two different paintings that could be provided to the Trust in place of the painting that had been given away. (PSI00038423). Ms. Boucher responded, “I think this will work.” Two weeks later, on February 2, 2005, Ms. Alexander wrote to Ms. MacInnis at Irish Trust Company “about an exchange of art that Sam gifted at Christmas. I just want to follow up and make sure it works for you and the Trustees as well. ... Please let me know if this works for you, so we can book as an December exchange.” Ms. MacInnis responded the same day: “We are booking the art exchange ... in December.” (PSI00038422).

The documentation related to Off in the Distance shows that no one associated with the Wyly family office, the Irish Trust Company, or the Bessie Trust questioned or objected to Mr. Wyly’s giving away the Trust’s property. That his staff came up with an after-the-fact way to compensate the Trust for the painting’s loss does not alter the evidence showing that Sam Wyly was making the decisions on the content of the Audubon art collection.<sup>1156</sup>

**Green & Associates Invoices.** Another set of documents, related to artwork and furnishings handled by Green & Associates on behalf of the Charles Wyly family, provides evidence that items nominally owned

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<sup>1156</sup> See also 2002 instance in which the Elliott Yeary Gallery sold a painting without prior notice to or consultation with Audubon. (HST\_PSI000001; PSI00078328; HG0051).

by Soulieana were, in fact, purchased at the direction of Charles Wyly's family members and intended for the family's personal use.

On April 21, 1999, Ms. Robertson sent a fax to Ms. Boucher with copies of 16 invoices from Green & Associates, dated April 1 through April 4, 1999, itemizing specific furnishings and works of art that had been purchased for the Charles Wyly residence. Ms. Robertson wrote:

"As in the past, the protectorate committee recommends that Tyler Trust (Soulieana Limited) consider the purchase of collectibles and artwork. I am attaching invoices from Marguerite Theresa Green and Associates, Inc. totalling \$224,298.26. I am obtaining insurance on behalf of Soulieana, as requested. Pictures of these collectibles will come by courier with the original invoices. If possible, could these funds be wired **AS SOON AS POSSIBLE** since vendors need to be paid immediately."<sup>1157</sup>

Each of the 16 invoices billed Soulieana, described a particular item, identified its cost, and identified the room in which the item was intended to be placed in the Wyly home. For example, Invoice 234890 described a "mid-19th century Chinese pottery figure" costing about \$9,300, intended to go in the "upstairs sitting room." (PSI00078482) Invoice 23500 described a "set of 2 'Parian' wall shelves" costing about \$2,100, intended for "Mrs. Wyly's bath." (PSI00078493). Invoice 23502 described a "bronze and crystal lamp base" costing \$600, for "Mrs. Wyly's closet." (PSI00078495).

An earlier fax, dated January 21, 1997, sent by a Wyly family office employee to Green & Associates, informed the company that Mr. Wyly wanted these types of purchases to be billed to Soulieana: "Pursuant to Mr. Wyly's telephone conversation, please invoice future purchases of collectibles" to Soulieana Ltd. (PSI00078559). A fax dated February 10, 1997, from the same Wyly family office employee to the Huntsman Gallery of Fine Art in Aspen, Colorado, was even more explicit: "[P]lease invoice the recent purchase by Dee Wyly" to Soulieana. "The Wyly name should not be noted on the invoices." (PSI00078558).<sup>1158</sup> A fax dated two days later, on February 12, from

<sup>1157</sup> PSI00078481 (emphasis in original). The same wording appears in other invoices as well. See, e.g., PSI00078475 (fax dated 6/29/99); PSI00078478 (fax dated 3/7/99); PSI00078498 (fax dated 1/30/99); PSI00078506 (fax dated 12/23/98); PSI00078505 (fax dated 8/13/98); PSI00078507 (fax dated 1/29/98).

<sup>1158</sup> An undated handwritten letter from Paul Klinerman of the Huntsman Gallery states: "Enclosed are copies and documentation for art purchased on 2 invoices by Dee Wyly. ... The 1/2/97 invoice was paid by Dee[.] The 2/4/97 invoice was sent to Soulieana Limited."

Ms. Robertson to Lorne House recommended that “Tyler Trust (Soulieana)” purchase all of the items described in invoices provided by Green & Associates, for a total of about \$450,000. The fax states: “The property is presently in storage but will eventually reside at ... Deloache, Dallas, Texas,” giving the address of the residence of Charles Wyly and his wife. (PSI00078517). Five days later, on February 17, the Trustee sent \$450,000 in offshore dollars from Soulieana to Green & Associates to buy the items. (PSI00078556).

Together, these documents suggest that Green & Associates routinely purchased art and furnishings for the Charles Wyly family home, that some of the items were selected by his wife, and, at the direction of Charles Wyly, the purchases were often billed to Soulieana. The protectors, in turn, routinely asked the Tyler Trust to approve the purchases as soon as possible.<sup>1159</sup> It appears from the documentation that the Trustee played no role in selecting or evaluating specific items as suitable trust investments; rather the Trustee was informed of the purchases after the fact and asked to make immediate payment to the vendors. Soulieana or its parent trust then supplied the funds requested. The Subcommittee is unaware of any evidence showing that Lorne House ever declined to pay a Green & Associates invoice.

**Jewelry.** In addition to artwork and home furnishings, Audubon and Soulieana expended significant sums on jewelry. One set of documents shows that, while the jewelry was held in the name of the two IOM corporations, individual pieces were treated as if they were the personal possessions of particular Wyly members who kept the pieces in their homes and directed their use.

In 2003, when renewing a jewelry insurance policy, the Wyly family office was apparently asked to identify the single most expensive piece owned by Audubon and Soulieana, and to describe how often Wyly family members wore insured jewelry.<sup>1160</sup> On July 15, 2003, Ms. Boucher wrote in response: “[C]an get it to you today – I think the new

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Notations on the side of the letter in another person’s handwriting state: “Shari – When Soulieana pays, Huntsman will reimburse Mrs. Wyly.” (PSI00078515)

<sup>1159</sup> One of the trust protectors, Mr. French, told the Subcommittee that he had not been informed of and did not participate in the recommendations for these purchases, and first learned of them when the Subcommittee showed him the documentation. Subcommittee interview of Mr. French (4/21/06). Mr. French said that the recommendations must have been made solely by Ms. Robertson, despite his understanding that both protectors had to act together for a recommendation to be made.

<sup>1160</sup> See 7/15/03 email from Ms. Hennington, head of the Wyly family office, to Ms. Boucher on “insurance” (PSI\_ED00002658)(“For the insurance renewal’s on the jewelry policy the company needs to know the most expensive piece owned by both Audubon and Soulieana.”).

necklace might be the largest for Soulieana ... [and] Cheryl's \$600K ruby is the most expensive on Audubon but will confirm." (PSI\_ED00002658) Later the same day, Ms. Hennington sent the following information to the insurance company: "[H]ere are the answers to your questions:

"Sam family – \$600,000 earrings bought for Cheryl Charles family – \$100,000 ... [for] a ring purchased by Donnie for Martha – all of the very expensive pieces are owned by Soulieana Audubon – \$622,000 ruby in Chery's possession Soulieana – \$759,000 necklace in Dee Wyly's possession ...." (PSI\_ED00002670).

The wording of these emails indicates that individual jewelry pieces nominally owned by Audubon or Soulieana were treated as if they were the property of individual Wyls, such as the "ruby in Cheryl's possession" and "necklace in Dee Wyly's possession." The Subcommittee saw no evidence that the Bessie or Tyler trustees played any role in selecting, evaluating as trust investments, or controlling the use of the jewelry purchased by Audubon and Soulieana.<sup>1161</sup>

**Reinvoicing.** On a number of occasions, either Sam or Charles Wyly requested that items which they or other family members had purchased personally be re-invoiced so that the cost would be paid by either Audubon or Soulieana. For example, in 2002, after receiving invoices for jewelry purchases totaling about \$37,000, the Wyly family office sent an email to the merchant on behalf of Charles Wyly as follows: "I just received a note from Mr. Wyly requesting that a couple of the invoices be charged to Soulieana. The invoice numbers are 19951A and 19951C. Can these please be addressed and re-billed to Soulieana? I hate to burden you with this again, but your help is appreciated as always." (PSI\_ED00004943; see also PSI-JEWEL00166-68). On July 18, 1997, six weeks after purchasing a Thomas H. Benton painting for \$156,500, Sam Wyly sent a letter to Christie's asking for the invoice to be re-billed to Audubon, formerly known as Fugue: "I am faxing a copy of invoice #J276149 that I need to have rebilled to Fugue Ltd. ... I would like to appologize [sic] for any inconvenience this causes you." (PSI\_Christ00258-59). These and other requests for invoice changes suggest that there was little, if any, difference between a personal purchase by a Wyly family member and a purchase made in the

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<sup>1161</sup> Mr. French also told the Subcommittee that, from 1992 until 2000, he played no role in recommending the purchase of jewelry by the offshore entities, and any such recommendations must have come from Ms. Robertson alone. Subcommittee interview of Mr. French (4/21/06).

name of one of the offshore corporations.<sup>1162</sup> It also shows that the Wylys could rely on the trustees to fund the purchases they made.

**Lending \$1.4 Million.** On occasion, some purchases of artwork seemed to have been less about buying specific pieces of art, than about bringing offshore dollars into the United States. For example, during the first half of 2001, the Wrangler Trust, a U.S. trust settled by Sam Wyly, had purchased a number of works of art and other collectibles at a total cost of about \$1.4 million.<sup>1163</sup> On October 2, 2001, the Wrangler Trust abruptly sold all of these items to Audubon for \$1.4 million in offshore dollars.<sup>1164</sup> Later the same day, the Wrangler Trust loaned \$1.4 million to Sam Wyly for a business investment.<sup>1165</sup> As far as the Subcommittee can tell, these transfers of money and ownership had no impact on the underlying works of art or furnishings. The items did not move from one location to another or change possession. The October sale and loan did, however, serve to transfer \$1.4 million from Audubon's offshore account into the pocket of Sam Wyly so that he could invest in a U.S. business venture. None of the "sale" documents show any involvement of the Bessie Trustee in evaluating the items being acquired or consenting beforehand to their purchase.

**Controlling the Details.** Many documents show that Wyly family members exercised direction over even minor aspects of specific purchases by Audubon or Soulicana, such as determining where a particular purchase should be delivered or under what circumstances it should be sold. In 2002, for example, an invoice issued by Christie's for the purchase of two historical documents associated with the presidencies of Harry Truman and Herbert Hoover was addressed to Sam Wyly at Audubon, even though Mr. Wyly held no executive

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<sup>1162</sup> See also PSI\_ED00015799 (11/3/04 email from Ms. Hennington to Ms. Boucher states: "Rena got an e-mail for \$320k of art today and was going to have it re-invoiced to Audubon provided they have \$\$ - if not we will pay from Sam."); PSI\_ED00011332-33 (Wyly family office states in an email that Charles Wyly "brought by a note that he had bought a bauble at [a jewelers] and Soulicana should pay," after which Soulicana paid the \$319,000 invoice, PSI-JEWEL00169-70); and HG0228-30, 375 (paintings nominally owned by Audubon are treated and discussed as if personally owned by Sam Wyly).

<sup>1163</sup> See, e.g., PSI\_ED00022604 (listing five purchases); PSI\_ED00005187 (discussing five Pablo Picasso paintings purchased by Wrangler); PSI00025525-26, 33 (discussing a \$35,000 art purchase); PSI00025571 (9/30/01 financial statement for the Wrangler Trust listing as an asset "Furniture, Art and Jewelry" valued at \$1,460,100).

<sup>1164</sup> See, e.g., PSI00025531, 33, 39 (showing on 10/2/01, Audubon paid \$1,424,850 to the Wrangler Trust for "artwork").

<sup>1165</sup> See, e.g., PSI00025531 (showing Wrangler \$1.4 million loan to Sam Wyly for an investment in "Precept").

position at the corporation.<sup>1166</sup> An internal Christie's email discussing the sale, on October 30, 2002, stated that Mr. Wyly had asked for the documents to be shipped to Dallas, which meant he needed to pay an added \$2,760 in sales tax. (PSI\_CHRIST00321). That email was followed by another on November 5, 2002, which stated: "The client just told us that she wants it shipped to Colorado NOT Texas so no sales tax due." The documents were delivered to Sam Wyly at his daughter's art gallery in Aspen, Colorado. (PSI-CHRIST00317). None of the documents reviewed by the Subcommittee showed any role played by the Bessie Trustee in evaluating the documents as investments or determining where the documents should be located, despite Audubon's footing the \$33,000 bill.

In another instance, a set of rare books from 1838, The Indian Tribes of North America, was sold to Audubon in 1998, for \$145,000, delivered to Sam Wyly's personal residence, and apparently displayed in his library. (HST\_PSI000006; TPC-S0025, 28-29). In 2005, Sam apparently consigned the books to Sotheby's for sale by auction, and Sotheby's records listed him as the books' owner. (PSI00078328). In a fax dated June 10, 2005, Sam wrote: "[Y]our records are inaccurate regarding 'The Indian Tribes of North America.' These three books are owned by Audubon Asset Limited." (SENATE00213). In response, Sotheby's wrote that it had moved "the consigned property from Mr. Wyly's personal account to the Audubon Assets account," but also stated that "Mr. Wyly should initial the suggested reserve if he agrees to it," continuing to confer on him decisionmaking authority over property nominally held by Audubon. (SENATE00204). The books sold later that month. (PSI00078328).

**Paying for Wyly Family Portraits.** A final example of the offshore art expenditures in this case history involves Wyly family portraits. Over a seven-year period from 1997 until 2004, Audubon and Souleiana paid at least \$870,000 in offshore dollars to artists who produced 20 portraits of individual Wyly family members, including Sam, Charles, their wives, their children, and their grandchildren.<sup>1167</sup> These portraits cost between \$30,000 and \$50,000 each. In 2004, all of these portraits were apparently hanging in the homes of Wyly family

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<sup>1166</sup> See, e.g., PSI-CHRIST00327 (10/9/02)(purchase of "Truman, H. DS, 8 May 1945, Proclamation – end of European War" and "Hoover, H. Illuminated DS Requesting American Support, 1931"). See also bill of lading (Christie's000019, 23, both with handwritten notations); PSI-CHRIST00272.

<sup>1167</sup> See HG0043-44 (invoice for \$330,000 for eight portraits); HG0053-54 (invoice for \$180,000 for six portraits); HG0056 (invoice for \$200,000 for four portraits); HG0057 (invoice for \$80,000 for two portraits).

members.<sup>1168</sup> The documents associated with these portraits contain no indication that the Bessie or Tyler Trustees played any decisionmaking role in the selection of the artists or in valuing the paintings. The fact that these portraits were financed with trust funds is additional evidence of the level of influence exercised by the Wyllys over how the trust funds were spent.

**Analysis of the Issues.** Since 1992, at least \$30 million in Wyly-related offshore dollars were spent on Wyly family portraits, other works of art, expensive home furnishings, rare documents and books, and costly jewels worn by Wyly family members. The documents suggest that the Bessie and Tyler Trusts played little or no role in the selection, location, or use of the hundreds of items purchased by Audubon and Soulieana. Instead, the evidence suggests that the Wyllys used offshore funds, funneled through Audubon and Soulieana, to buy the items they wanted. The trusts supplied the funds when asked.

#### **(8) Hiding Beneficial Ownership**

From 1992 to 2004, the 58 offshore trusts and corporations in the Wyly offshore structure opened numerous accounts at prominent securities firms in the United States, Credit Suisse First Boston (CSFB), Lehman Brothers, and Bank of America. They used these accounts to buy and sell securities, make investments, and send multi-million-dollar wire transfers. All three financial institutions knew that the offshore entities were associated with the Wyly family, but none of the institutions ever required the offshore entities to identify their beneficial owners or document their connection to the Wyllys.

These offshore corporations and trusts presented a classic case of hiding beneficial ownership. For more than a decade, U.S. banks have been required to “know their customers” to prevent criminals from misusing bank services; part of that obligation has been, when opening accounts for offshore corporations and trusts from secrecy jurisdictions, to identify the beneficial owners behind the offshore entities. Securities firms did not operate under the same legal requirements until enactment of the 2001 Patriot Act which extended anti-money laundering requirements to securities accounts as well. By July 2002, the Patriot Act required securities firms that opened “private banking accounts” with at least \$1 million for foreign account holders, to identify both the nominal and beneficial owners of those accounts. By May 2003, SEC

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<sup>1168</sup> See, e.g., possession agreements with Sam and Cheryl Wyly (PSI00078387-88), with Laurie and David Matthews (PSI00078432), with Kelly and Jason Elliott (PSI00078421), and with John Graham and Lisa Wyly (PSI00078442).

regulations required securities firms to identify the beneficial owner of each account they administered.

By the summer of 2003, the Wyly-related offshore entities had moved to Bank of America and opened dozens of securities accounts. Some of their transactions began tripping alarms in the anti-money laundering surveillance system used by the clearing broker, National Financial Services (NFS), that administered the Bank of America accounts. NFS insisted that, if Bank of America wanted it to continue to handle the accounts, it needed the information required by law – the names of the beneficial owners behind the offshore corporations and trusts using the accounts. For more than a year, the offshore entities resisted providing the information, and Bank of America tried to convince NFS not to press for it. Finally, in late 2004, after Bank of America received subpoenas issued by the Manhattan District Attorney seeking information about the accounts, Bank of America closed them.

Bank of America knew that the offshore entities were associated with the Wyllys. The key broker who handled the accounts, Louis Schaufele, knew that Sam and Charles Wyly were directing the offshore entities' investment activities. He nevertheless insisted that the offshore entities be treated as independent of the Wyllys and fought efforts to identify the Wyllys as their beneficial owners. In addition, when, for tax purposes, the offshore entities submitted W-8BEN forms representing that they were independent foreign entities, beneficially owned the accounts assets, and were not subject to IRS requirements for reporting investment income paid to U.S. persons, Bank of America accepted the forms and never filed a 1099 reporting the account income to the IRS.

Had the offshore entities acknowledged that the Wyllys were the beneficial owners of the offshore trusts and corporations for anti-money laundering purposes, and allowed their connection to these entities to be documented at Bank of America, it would have been harder for the Wyllys to deny their connection to these entities for tax and securities purposes.

#### **(a) Background on Beneficial Ownership**

For decades, U.S. banks have had an obligation to “know their customers,” to understand the natural persons behind offshore corporations and trusts, to ensure that bank services would not be misused for illegal purposes. U.S. banks have also operated for years under legal obligations to report suspicious transactions to law enforcement to prevent money laundering.



In contrast, until recently, U.S. securities firms did not operate under the same know-your-customer obligations. For many years, brokers were required to evaluate their customers to ensure that they were selling them suitable investments – for example, selling high risk securities to persons with a high tolerance for risk and not to an elderly person on a fixed income – but this obligation was not equivalent to performing a due diligence review to guard against opening an account for a questionable person. Some securities firms set up voluntary anti-money laundering (AML) programs,<sup>1169</sup> but it was not until passage of the Patriot Act in 2001 that all U.S. securities firms became legally obligated to establish AML programs and to identify and verify the identity of their customers.<sup>1170</sup>

#### **Beneficial Ownership under Anti-Money Laundering Laws.**

Three key laws set out the obligations of U.S. financial institutions to know their customers and guard against misuse of their accounts, the Bank Secrecy Act of 1970, the Money Laundering Control Act of 1986, and the 2001 Patriot Act, which amended both prior laws.<sup>1171</sup> These and other AML laws have, over time, tightened requirements for banks and other financial institutions to evaluate clients, monitor transactions, and report suspicious activity.

The 1970 Bank Secrecy Act was the first to require U.S. financial institutions operating in the United States to undertake AML efforts, authorizing the Treasury Secretary to issue regulations requiring financial institutions to establish AML programs meeting certain criteria.<sup>1172</sup> In 1986, the Money Laundering Control Act was the first in

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<sup>1169</sup> See, e.g., “Anti-Money Laundering Efforts in the Securities Industry,” GAO-02-111 (October 2001)(In this report, GAO surveyed 3,015 broker-dealers and 310 mutual fund groups in the United States to determine whether they had voluntary anti-money laundering measures in place, such as procedures to obtain information on customers’ identities and source of funds, review decisions to open new accounts, monitor account transactions for possible money laundering, and report suspicious activity to law enforcement. The GAO survey estimated that only 17% of broker-dealers reported having such voluntary anti-money laundering measures in place; an estimated 83% of the broker-dealers did not).

<sup>1170</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, 115 Stat. 272 (10/26/01)(“Patriot Act”).

<sup>1171</sup> For a more detailed discussion of U.S. anti-money laundering laws, see “Anti-Money Laundering: Issues Concerning Depository Institution Regulator Oversight,” GAO-04-833T (6/3/04), testimony provided by GAO before the U.S. Senate Committee on Banking, Housing, and Urban Affairs, at 4-6.

<sup>1172</sup> 31 U.S.C. § 5318(h). For many years, Treasury required only banks, and not other types of financial institutions, to establish AML programs. After enactment of the 2001 Patriot Act, Treasury expanded the requirement for AML programs to other types of financial institutions, including securities firms.

the world to make money laundering itself a crime, prohibiting persons from knowingly engaging in financial transactions involving criminal proceeds.<sup>1173</sup> In 1996, the Treasury Secretary began requiring banks to file Suspicious Activity Reports on client transactions raising red flags of possible misconduct.<sup>1174</sup> In 1997, the Federal Reserve issued special guidance warning banks catering to wealthy individuals through “private banking accounts” of the need to install controls to detect and report possible money laundering.<sup>1175</sup> In 1998 and 2000, federal bank regulators issued guidance on spotting suspicious transactions and strengthening regulatory reviews of banks’ AML programs.<sup>1176</sup>

In 2001, after the terrorist attack of September 11th, President Bush announced an intensified effort to uncover and stop terrorist financing, and Congress enacted the Patriot Act which, in part, greatly strengthened federal AML laws.<sup>1177</sup> Among other provisions, the Patriot Act required all U.S. financial institutions, including securities firms, to establish AML programs,<sup>1178</sup> verify the identity of their account holders,<sup>1179</sup> and exercise due diligence when opening and administering private banking accounts for foreign persons.<sup>1180</sup> It also required securities firms to begin filing Suspicious Activity Reports.<sup>1181</sup>

The Patriot Act imposed a special set of requirements to prevent misuse of “private banking accounts” by foreign account holders.

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<sup>1173</sup> 18 U.S.C. §§ 1956-57.

<sup>1174</sup> See, e.g., 31 U.S.C. §§ 5313 and 5318(g); 31 C.F.R. §§ 103.11 and 103.21 et seq.

<sup>1175</sup> “Sound Risk Management Practices Governing Private Banking Activities,” prepared by the Federal Reserve Bank of New York (1997)(providing private banks “with guidance regarding the basic controls necessary to minimize reputational and legal risk and to deter illicit activities, such as money laundering”).

<sup>1176</sup> See, e.g., 1998 Bank Secrecy Act examination manual, and 2000 Bank Secrecy Act/Anti-Money Laundering Handbook, prepared by the Office of the Comptroller of the Currency.

<sup>1177</sup> See, e.g., Title III of the Patriot Act.

<sup>1178</sup> 31 U.S.C. § 5318(h).

<sup>1179</sup> 31 U.S.C. § 5318(l).

<sup>1180</sup> 31 U.S.C. § 5318(i). (“Each financial institution that establishes, maintains, administers, or manages a private banking account ... in the United States for a non-United States person, ... shall establish appropriate, specific, and when necessary, enhanced, due diligence policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through those accounts.”).

<sup>1181</sup> Section 356 of the Patriot Act required the Treasury Secretary to issue regulations requiring brokers and dealers to file Suspicious Activity Reports (SARs) under 31 U.S.C. § 5318(g); those regulations were promulgated on 7/1/02, and required securities firms to begin filing SARs on transactions that took place after 12/30/02. 67 Fed. Reg. 44048.

“Private banking accounts” are accounts opened by banks, securities firms, or certain other financial institutions that require a minimum of \$1 million in funds or assets, are opened for individuals with a “direct or beneficial ownership interest” in the account, and use an employee, such as a private banker or account officer, to act as a personal liaison between the financial institution and the “direct or beneficial owner.” 31 U.S.C. § 5318(i)(4)(B). The law required all financial institutions that opened such private banking accounts for foreign account holders to “ascertain the identity of the nominal and beneficial owners” of the account. 31 U.S.C. § 5318(i)(3)(A). This provision included, for example, the requirement that financial institutions ascertain the beneficial owners of accounts opened in the name of foreign corporations or trusts.<sup>1182</sup> This provision became legally binding in July 2002.

The Patriot Act also directed the Treasury Secretary to promulgate regulations further delineating the due diligence obligations of financial institutions, and further defining which account holders have “beneficial ownership of an account.” Section 312(b) of the Patriot Act; 31 U.S.C. § 5318A(e)(3). In response, Treasury issued proposed regulations in May 2002, an “interim final rule” in July 2002, and a final rule in January 2006.<sup>1183</sup> Each of these rules repeated the legal obligation of financial institutions to ascertain the nominal and beneficial owners of private banking accounts.<sup>1184</sup>

The U.S. accounts opened by the Wyly-related offshore entities must be viewed through this history of evolving AML laws. In the United States, the offshore entities opened only securities accounts

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<sup>1182</sup> See, e.g., final regulation implementing Section 312 of the Patriot Act, 71 Fed. Reg. 496, at 509 (“Because of the unique vulnerabilities for money laundering that exist in the private banking context, it is critical that covered financial institutions conduct their own due diligence with respect to the beneficial owners of private banking accounts. Senator Levin specifically discussed accounts opened in the name of investment advisers, shell corporations, or trusts on behalf of other persons, noting that ‘[they] are exactly the types of accounts that terrorists and criminals use to hide their identities and infiltrate U.S. financial institutions. And thus they are exactly the accounts for which U.S. financial institutions need to verify and evaluate the real beneficial owners.’”).

<sup>1183</sup> See definition of “beneficial ownership interest” in proposed rule to implement Section 312 of the Patriot Act, 67 Fed. Reg. 37736 (5/30/02); interim final rule implementing Section 312, 67 Fed. Reg. 48348 (7/3/02); and definition of “beneficial owner” in the final rule implementing Section 312, 71 Fed. Reg. 496 (1/4/06).

<sup>1184</sup> The requirement that financial institutions ascertain the identity of all nominal and beneficial owners of a private banking account is codified at 31 U.S.C. § 1518(i)(3)(A) and 31 C.F.R. § 103.178(b)(1). The final rule issued in 2006 defines a “beneficial owner” of an account as a natural person “who has a level of control over, or entitlement to, the funds or assets in the account that, as a practical matter, enables the individual, directly or indirectly, to control, manage or direct the account.” 31 C.F.R. § 103.175(b).

which, prior to the Patriot Act, operated under fewer legal requirements and less scrutiny than bank accounts. When they opened accounts at CSFB in 1992, for example, know-your-customer practices at securities firms were voluntary, and the SEC exercised no routine oversight. When the accounts moved to Lehman Brothers in 1995, the regulatory environment was little changed. By the time the accounts moved to the securities divisions of Bank of America in 2002, however, the Patriot Act had been enacted, AML concerns had heightened, due diligence regulations were being drafted, and U.S. securities firms should have been on full alert about their obligation to know their customers.

**Beneficial Ownership under U.S. Tax Law.** In addition to guarding against clients attempting to launder illegal proceeds, U.S. financial institutions have for many years been required to help guard against tax evasion by reporting client account income to the IRS. These reporting obligations have, for years, applied equally to both banks and securities firms.

Under U.S. tax law, any person who makes payments on a financial account, such as a bank or securities firm that makes interest, dividend, or capital gains payments on a client account, is subject to IRS reporting and withholding obligations with respect to the account holder. The tax code refers to the person who has these reporting and withholding obligations as the “withholding agent,” because under certain circumstances they may be required to withhold income from a financial account and forward that income to the IRS.

To carry out the reporting and withholding obligations assigned to them under the tax code, withholding agents are required to obtain certain information from their account holders.<sup>1185</sup> One key item of information is whether the account holder is a U.S. citizen or resident, or is instead a foreign person. If the account holder is a U.S. citizen or resident, the withholding agent must obtain the person’s Taxpayer Information Number (TIN), and file a 1099 information return with the IRS reporting the person’s name, TIN, and any income paid on the

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<sup>1185</sup> The IRS regulations actually require the withholding agent to obtain the information from the “beneficial owner” of the account, instead of the account holder. A beneficial owner for tax withholding purposes is “the person who is the owner of the account for tax purposes and who beneficially owns that income . . . under general U.S. tax principles, including principles governing the determination of whether a transaction is a conduit transaction.” 26 C.F.R. § 1.1441-1(c)(6). The regulation states, for example, that a person who receives account income as a nominee, agent, or custodian for another person is not the beneficial owner of that account income.

account during the year.<sup>1186</sup> For example, the withholding agent must include on the 1099 form all payments of interest, dividend, or capital gains made to the account. The IRS then uses these 1099 filings to determine whether the account holder, a U.S. taxpayer, has reported all appropriate account income on their tax return.

If the withholding agent files a 1099 report, it has no obligation to withhold any funds from the account, unless the account holder fails to provide a TIN. In the absence of a TIN, the withholding agent is required to withhold 28 percent of all income paid on the account and send the withheld funds to the IRS, where the account holder may file a claim for reimbursement.<sup>1187</sup> The purpose of this withholding requirement is to ensure that the U.S. account holder pays the tax due on U.S. investment income and doesn't circumvent IRS oversight by failing to submit a TIN.

On the other hand, if an account holder is foreign, rather than a U.S. citizen or resident, the withholding agent is required to file a 1042 or 1042S form with the IRS reporting certain payments of interest and dividend income on the account, to withhold 30 percent of that interest and dividend income as a tax, and to send withheld funds to the IRS where, again, the account holder can file for reimbursement.<sup>1188</sup> Despite this withholding obligation, it is possible that, with respect to a particular account, a foreign account holder will be subject to little or no tax and no 1042 form will have to be filed. The primary reason is that, while U.S. law requires foreign account holders to pay tax on certain interest and dividend income, it imposes no tax at all on capital gains paid on accounts held by foreign account holders.<sup>1189</sup> Foreign account holders who construct investment portfolios that produce little or no interest or

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<sup>1186</sup> 26 C.F.R §§ 1.6042-2 (dividends); 1.6044-1 (brokerage transactions); 1.6049-4 (interest). Certain exemptions not relevant to this case history apply to the 1099 filing requirement. A Taxpayer Information Number is either an individual's social security number or a number assigned to the entity by the IRS. The withholding agent is not required to withhold any portion of income reported to the IRS on a 1099 form.

<sup>1187</sup> 26 U.S.C § 3406(a) and (b)(3).

<sup>1188</sup> 26 U.S.C. § 1441(a). In some cases where a tax treaty has been signed, a rate lower than 30 percent is used. Although these withholding regulations have been in place for almost ten years, many banks, securities firms, and other withholding agents have inadequate systems in place to ensure compliance. In response, the IRS began a major push to improve compliance. In 2004, the IRS announced a Voluntary Compliance Program that gave withholding agents until March 31, 2006, to voluntarily disclose and resolve deficiencies in their withholding systems before IRS commenced more aggressive enforcement action. See Rev. Proc. 2004-59, 2004-2 CB 678; Rev. Proc. 2005-71, 2005-47 IRB 985.

<sup>1189</sup> 26 U.S.C. § 861(a).

dividend income, thus, may be free of all or most taxation on the account.

Another key issue for withholding agents is how to handle accounts that are opened in the name of one person to benefit another. The regulations provide that withholding agents are supposed to report account income only for the true beneficial owner of the account's assets, and not for any nominee or intermediary that is managing the account on behalf of the beneficial owner.<sup>1190</sup> Section 1.1441-1(c)(6) of the withholding regulations, for example, defines the "beneficial owner" of an account as "the person who is the owner of the [account] income for tax purposes . . . under . . . generally applicable tax principles." Similarly, the regulations state that, for accounts of entities such as partnerships and trusts, it is the partners, grantors, and beneficiaries – not the partnerships or the trustees – that are the beneficial owners of the accounts and for whom account income must be reported.<sup>1191</sup>

As a practical matter, to determine whether the beneficial owner of an account is a U.S. person subject to 1099 reporting or a foreign person subject to 1042 reporting, the withholding agent typically asks the account holder to fill out a withholding certificate in which the account holder is required to identify the beneficial owner of any account income. U.S. account holders fill out W-9 Forms and are required to supply their identifying information, including a TIN. Foreign account holders fill out W-8 Forms, of which there are two types, the W-8BEN and the W-8IMY. The W-8BEN form is supposed to be filled out by account holders who are the direct beneficial owners of the account assets. These account holder are supposed to supply a TIN if they have one, and name the foreign country of which they are a resident. W-8IMY forms are supposed to be filled out by account holders who are holding account assets as an intermediary for another person. Intermediaries include, for example, trusts. An account holder who is an intermediary is required to file both a W-8IMY form for itself as well as a W-8BEN form for each beneficial owner of the account assets.<sup>1192</sup>

IRS regulations state that a withholding agent may rely on the withholding certificate to treat an account holder as foreign, unless it has "actual knowledge" or "reason to know" that the certificate is false. Treas. Reg. § 1.1441-7(b)(1). The term "actual knowledge" is not

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<sup>1190</sup> 26 C.F.R. § 1.1441-1(b)(v).

<sup>1191</sup> 26 C.F.R. §§ 1.1441-5(c)(1) and (e)(3).

<sup>1192</sup> See IRS Publication 515, "Withholding of Tax on Non-Resident Aliens and Foreign Entities," (Rev. January 2006).

defined. Subsections 1.1441-7(b)(2) through (10) contain detailed rules for determining when a withholding agent has “reason to know” that a withholding certificate or supporting documentation is false or unreliable. Subsection (b)(2) provides a general rule, defining “reason to know” as information that would cause a reasonably prudent person to question the claims made. Other subsections provide more narrow tests, which in some cases appear to allow financial institutions to rely on documentation supplied by an account holder even if other information suggests the documentation may present an incomplete or misleading picture.<sup>1193</sup> For example, if an allegedly foreign account holder provides a financial institution with a U.S. address, thereby suggesting it may be a U.S. resident, the account holder can also provide documentation showing that it is organized under the laws of a foreign jurisdiction, and the financial institution apparently may then rely on that documentation to treat the account holder as foreign and not subject to 1099 reporting.<sup>1194</sup>

The regulations do not explicitly address the filing obligations of a withholding agent that, for example, has actual knowledge that an account holder is an offshore shell corporation or trust that is controlled by a U.S. taxpayer.<sup>1195</sup> In such a situation, the U.S. taxpayer may qualify as the beneficial owner of the account assets on several grounds, including legal theories treating the nominal account holder as an agent of the taxpayer, as a sham corporation or trust, or as a “controlled foreign corporation” or “grantor trust” whose income must be attributed to the U.S. taxpayer who controls it.

In the case of the Wyly-related offshore entities, all of the offshore corporations and trusts filed W-8BEN forms representing that they were foreign persons and beneficially owned the account assets, even though their investment activities were being directed by and benefitting U.S. taxpayers. CSFB, Lehman Brothers, and Bank of America apparently never filed 1099 forms for any of these accounts, even though the key broker, Louis Schaufele, knew that the foreign entities were closely associated with the Wyllys who were directing their investment activities.

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<sup>1193</sup> See, e.g., Treas. Reg. §1.1441-7(b)(4).

<sup>1194</sup> Compare, e.g., subsection 1.1441-7(b)(8)(ii) (providing that documentary evidence is considered unreliable to establish foreign status of an account holder where the withholding agent has a U.S. mailing or residence address for the account) with subsection 1.1441-7(b)(8)(ii)(B) (providing that the withholding agent may treat an account holder that is an entity as a foreign person even if it has a U.S. mailing address for the account, if the withholding agent has a document showing that the entity is “actually organized or created under the laws of a foreign country”).

<sup>1195</sup> A financial institution may acquire this knowledge, for example, after conducting a due diligence review as part of its anti-money laundering (AML) program.

**(b) CSFB, Lehman Brothers, and Bank of America Accounts**

From 1992 until 1995, CSFB opened about 20 securities accounts for Wyly-related offshore trusts and corporations, as well as for Maverick's offshore funds.<sup>1196</sup> Over a seven-year period from 1995 until 2002, Lehman Brothers opened about 125 securities accounts for the Wyly-related offshore entities.<sup>1197</sup> Over a three-year period from 2002 until 2005, Bank of America opened about 65 securities accounts.<sup>1198</sup> At each institution, the key broker handling the accounts was Louis Schaufele.

Despite the involvement of dozens of offshore entities, frequent multi-million-dollar wire transfers across international lines, and the continual tightening of U.S. AML laws, none of these financial institutions ever required the account holders to disclose the names of the persons behind them. Even after passage of the 2001 Patriot Act, the imposition of stiffer AML requirements on foreign account holders with private banking accounts in 2002, and issuance of SEC regulations requiring identification of beneficial owners in 2003, Bank of America allowed the accounts to continue operating while accommodating the refusal of the offshore entities to identify their beneficial owners. In addition, all three financial institutions allowed the offshore entities to file W-8 forms and represent that they were foreign owners of the account assets, even though they were shell offshore entities whose investment activities were being directed by the Wylys and their representatives, and whose account income was benefitting Wyly interests.

**Accounts Move to Bank of America.** At the time the Wyly-related offshore entities opened securities accounts at CSFB in 1992, very little know-your-customer information about securities account holders was required under U.S. law. The same was true in 1995, when the accounts moved to Lehman Brothers. Mr. Schaufele knew and informed both institutions that the offshore accounts were associated with the Wyly family, but insisted that each account be treated as an

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<sup>1196</sup> See CSFB list of accounts (CSFB0015938-41)(showing accounts from 1992 to 1995).

<sup>1197</sup> See Lehman Brothers list of accounts prepared by the Subcommittee Minority Staff (showing accounts from 1995 to 2002).

<sup>1198</sup> See Bank of America list of accounts provided to the Subcommittee on 10/24/05 (produced without bates numbers)(showing accounts from 2002 to 2005).



independent legal entity. In 2002, Mr. Schaufele left the firm and moved to Bank of America, taking the offshore accounts with him.<sup>1199</sup>

Mr. Schaufele had begun employment negotiations in the fall of 2001, and told Bank of America in September that he was willing to make the move.<sup>1200</sup> He received a formal job offer in January 2002, from the Private Client Services division of Banc of America Securities (BAS).<sup>1201</sup> BAS was one of at least two securities divisions within Bank of America. The Private Client Services division catered to wealthy individuals and was the securities equivalent of Bank of America's Private Bank that already administered a number of domestic bank accounts for the Wyly family.

On February 14, 2002, Mr. Schaufele sent Sam and Charles Wyly an email explaining that, unlike Lehman Brothers, where the offshore account holders were sometimes treated as related accounts, each of the offshore accounts would come into BAS as "a totally separate entity without any linkage," which he would work to maintain. (BA007662) On February 19, 2002, Ms. Boucher emailed Ms. Robertson that "Lou's move to B of A was final last week. Sam & Charles have consented to moving all their stuff with him," including the offshore accounts. (PSI\_ED00009278-79).

Mr. Schaufele's employment with BAS officially started on February 19, 2002.<sup>1202</sup> That same day he alerted Ms. Boucher to his willingness to travel to the Isle of Man and send his assistant, Michele Crittenden, to the Cayman Islands to expedite the BAS account opening process for the Wyly-related offshore entities.<sup>1203</sup> He also sent an email to the trustees of the Wyly-related offshore trusts, explaining his move to Bank of America. He wrote that, "assuming that you want to move the relationship," he would send account opening documentation and travel to the Isle of Man the following week to pick up the signed documents. The next day, the trustees responded that they were "considering with

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<sup>1199</sup> For more information, see the discussion of Lehman's concerns and how this issue was handled in the Report section on Converting U.S. Securities into Offshore Cash, above.

<sup>1200</sup> See 9/9/01 email from Mr. Schaufele to Jeff Spears at Bank of America (BA054831-32)(discussing plans to move to the new job).

<sup>1201</sup> 1/16/02 letter from Banc of America Securities to Mr. Schaufele (BA055294).

<sup>1202</sup> 2/19/02 email from Cindy Kellen at BAS to Virgil Harris and Mr. Schaufele (BA 056293)("Lou is the only member of your team that is effective with BAS as of Monday, Feb. 19<sup>th</sup>"). Mr. Schaufele brought two Lehman employees with him to BAS, Michele Crittenden and Virgil Harris.

<sup>1203</sup> 2/19/02 email from Mr. Schaufele to Ms. Boucher (BA083458).

the Trust Protectors” the future of the existing Lehman accounts, and would be in contact shortly. Mr. Schaufele responded that he had taken the liberty of sending the account opening documentation via overnight delivery, and would be in the Isle of Man the following week. The Isle of Man personnel apparently executed the documents on February 26 and 27, 2002, while the Cayman personnel executed their documents on March 12, 2002. In all, 32 offshore corporations and one offshore trust submitted documentation to open BAS accounts during Mr. Schaufele’s first month at BAS.

Even after the 33 forms were submitted, however, BAS did not immediately open the accounts. BAS compliance personnel expressed concerns and asked a number of questions about the offshore entities. At the time, compliance personnel at all U.S. securities firms were facing deadlines under the 2001 Patriot Act to establish formal AML programs, verify the identity of their customers, and to develop systems to identify and report suspicious activity to law enforcement. Among other provisions was a requirement, due to become effective in July 2002, that securities firms “ascertain the identity of the nominal and beneficial owners” of all private banking accounts opened or maintained for foreign account holders, which was exactly the type of BAS Private Client accounts being opened for the 33 offshore entities.<sup>1204</sup>

BAS compliance personnel apparently began working on the request to open the new accounts even before they received the signed account opening documentation. On Friday, March 8, Mr. Schaufele’s supervisor in the BAS sales department, Cindy Kellen, sent him the following message:

“[I] just got off the phone with our Compliance folks and next step is we have to run all the principals thru CDC [Compliance Data Center]. . . . Tom and I will be responsible for reviewing and approving all the activity in these accounts and as part of the ‘Know Your Customer’ requirement, will need to get comfortable with these entities.”<sup>1205</sup>

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<sup>1204</sup> See 31 U.S.C. § 5318(i)(3)(A). In addition, the SEC promulgated a regulation in 2001, which, among other provisions, required brokers to obtain the name and address of each account’s “beneficial owner.” 17 C.F.R. § 240.17a-3(a)(9). For corporate accounts, the rule required beneficial ownership information only for the persons actually transacting business on the account. This regulation became effective in May 2003.

<sup>1205</sup> 3/8/02 email from Sales Supervisor Cindy Kellen to Michele Crittenden and Mr. Schaufele (BA056104). Apparently the Compliance Data Center was used by BAS to run background checks on proposed account holders, as part of BAS’ anti-money laundering efforts.

Ms. Kellen also sent Mr. Schaufele a list of eight account transactions from the latest Lehman account statements for the offshore entities that had raised compliance concerns, including wire transfers that had moved \$15 million through the Sarnia and Greenbriar accounts on the same day.<sup>1206</sup> Mr. Schaufele responded with assurances that he had known the customers for many years and would obtain explanations for the specific transactions, adding: “I don’t know how familiar you are with offshore corp. Usually they are set up for a reason that being asset protection or tax deferral.”<sup>1207</sup> A few days later, another sales employee wrote to the supervisor that, “I just spoke with Jerry Timmons to get a better feel for our experience with offshore entities such as these. He confirmed that entities such as these are not unusual.”<sup>1208</sup>

On Monday, March 11, Mr. Schaufele’s assistant, Ms. Crittenden, provided additional information about the specific account transactions that had been questioned. She wrote in part: “These entities use the Lehman Brothers accounts as a vehicle to hold publicly traded investments and to pool excess funds that are not currently invested in

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<sup>1206</sup> 3/8/02 email from Ms. Kellen to Mr. Schaufele and Ms. Crittenden (BA056097).

<sup>1207</sup> 3/8/02 email from Mr. Schaufele to Ms. Kellen (BA056096).

<sup>1208</sup> 3/11/02 email from Thomas Sailors to Ms. Kellen (BA056077). Other documentation confirms that Bank of America routinely administered accounts for offshore entities associated with wealthy clients and had developed procedures and paperwork requirements to handle these accounts. For example, when Compliance personnel questioned a \$1.2 million journal of cash from an Elegance account to a Soulieana account, (BA077033), it identified the problem as missing documentation. (BA069730) BAS personnel explained: “[W]e recently processed a journal for [Elegance], ironically one of these offshore accounts. BAI does have paperwork policy on offshore trust accounts ... normally these accounts are opened through Bank of America in the Cayman Islands but occasional third party PIC [Private Investment Corporation] accounts are allowed by the Risk Committee, I am assuming these accounts were approved during conversion. The issue we are having with this account is that it does not have the required paperwork on file to process money movement requests. The paperwork requirements for PIC accounts are as follows:

- BAI Corporate Account Agreement & Enabling Resolutions signed by the Trust Officers managing the account. ...
- Depending on the underlying customer we require different paperwork. When the underlying customer is a corporation we require Articles of Incorporation, if it's a trust we require their Trust Document ... if it's an LLC they can provide us our LLC form.
- BAI has our own KYC forms for PIC accounts, we need these signed by the Bank

We processed a recent \$1.2 million journal for the above account without this appropriate paperwork as an exception, we need to get all this paperwork on this account (and any other offshore trusts you may have – if you plan on moving money out of them) to satisfy this exception.” 3/26/04 email from Cheryl Thompson, BAS Regional Operations Manager, to Lori Bensing, Private Bank Sales Manager (BA007690).

other investments, as such some of the activity is related to proceeds of sales or redemptions from other investments that cleared directly through the entities' Bank of Bermuda accounts."<sup>1209</sup> She also briefly described the circumstances behind several wire transfers. For example, she explained that a \$1 million wire transfer from Soulieana covered "an unexpected capital call on a real estate development that a related company [had] invested in." She described the \$15 million wire transfers between Sarnia and Greenbriar as transfers between "wholly owned subsidiaries of the same parent."<sup>1210</sup> While this description was not technically accurate – Sarnia was owned by the Lake Providence International Trust, and Greenbriar by the Delhi International Trust – both trusts had been settled by Sam Wyly, a fact not mentioned in the email. In any event, the information appeared to satisfy BAS Compliance, as no further questions were asked about the transactions.

Another standard part of BAS's know-your-customer effort was to check the names of account signatories and beneficial owners against a database that, for example, listed known terrorists, drug traffickers, and other persons barred from transacting business at U.S. financial institutions. On Friday, March 8, a list of 19 employees from the Isle of Man offshore service providers that serviced the Wyly-related offshore entities, each of whom planned to act as an account signatory, were submitted for a CDC background check.<sup>1211</sup> On March 11, BAS compliance told Ms. Kellen that nothing negative had shown up and, "[b]ased on the results and the questions and answers you have received I think you have done adequate due diligence."<sup>1212</sup>

The next day, Ms. Kellen told BAS Compliance that another person in the BAS sales department, Tom Sailor, had indicated that, while he was comfortable with the offshore accounts based on his conversation with Mr. Schaufele, he would not tell her the family name behind the entities because Mr. Schaufele said the family was "extremely worried about being linked to these accounts."<sup>1213</sup> In response, a BAS compliance manager asked Ms. Kellen to "ring me when you have a chance." Later that day, Ms. Kellen requested a CDC

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<sup>1209</sup> 3/11/02 email from Ms. Crittenden to Ms. Kellen (BA007597).

<sup>1210</sup> *Id.* The recipient of the wire was Stargate Farms, Ltd. [Tyler Trust], which passed the money on to Stargate Horse Properties, Inc., a Nevada corporation, ultimately for construction costs with respect to Emily Wyly Lopez's horse farm titled in the name Stargate Sport Horses LP. See 3/12/02 fax from Trident Trust to Michele Boucher (BA044166-67).

<sup>1211</sup> 3/8/02 email from Ms. Kellen to James Wu (BA056097).

<sup>1212</sup> 3/11/04 email from Carol Bonina to Ms. Kellen (BA056009).

<sup>1213</sup> 3/12/02 email from Ms. Kellen to Carol Bonina in Compliance (BA055983).

background check on Sam Wyly, presumably because BAS compliance had disclosed to her the family behind the offshore accounts.<sup>1214</sup>

By the end of the following day, March 13, BAS compliance had provided verbal approval to open the accounts, but a more senior compliance officer declined to provide written approval until BAS had “one more thing,”<sup>1215</sup> documentation on the identities of the account holders. BAS did not have this information for any of the 33 new accounts. Both the 2001 Patriot Act and 2001 SEC regulation contained provisions that would require financial institutions to ascertain the beneficial owners of their accounts, but neither of these provisions had yet taken legal effect. Mr. Schaufele apparently resisted pressing the offshore entities for this information, and a round of discussion followed.

The next day, March 14, a compromise was apparently reached in which BAS compliance agreed to allow the account opening process to go forward, while waiting for additional documents to arrive. Moreover, BAS compliance had agreed to obtain the documents, not from the “local family from Texas,” but from the “primary individuals responsible for communicating with BAS,” in other words the offshore personnel authorized to administer the accounts and act as account signatories:

“Please do not forward this email!

As discussed today ( in great detail). Please send your approval to Adrian Woods in new accounts to open the series of foreign accounts for the Dallas office today. As we talked about these offshore entities are holding investment companies vehicles ultimately owned by a trust. The trust is established by a local family from Texas. The source of the wealth is from a software company and a consumer retail chain. While the trust does not have an account here the broker has had the relationship for 10 years. We know full well the family however confidentiality is critical to this relationship and the assets are technically completely separate from the family as the stock of the corporations is owned by ‘the trust’. The family has also a relationship with the private bank.

While we have all the BAS documents executed we have also asked for verification of the primary individuals responsible

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<sup>1214</sup> 3/12/02 email from Ms. Kellen to James Wu and Allen Ching (BA055940).

<sup>1215</sup> 3/14/02 email from Jeff Spears to Tom Sailor (BA055903).

for communicating with BAS (drivers licensee, passport etc) and the official articles of incorporation or like document. We are requesting that the accounts be opened so we can start the ACAT [Automated Customer Account Transfer] from Lehman. The broker understands that if we do not get the documentation that we need in 30 days the accounts will be restricted.”<sup>1216</sup>

Later the same day, Ms. Crittenden emailed the Isle of Man offshore trustees requesting additional documents from them due to the “increased scrutiny for offshore entities in the US now.”<sup>1217</sup> She wrote: “We are just trying to show that we have done our due diligence. I think if we could get some additional documentation from you ‘for the file’ it would be very helpful.” She requested copies of articles of incorporation for the offshore corporations and, “[a]s crazy as this may sound, . . . proof of identification for all corporate officers i.e. drivers license or passport.” IFG responded: “Don’t worry, we are used to being asked for this kind of information.”

Over the next week, the Isle of Man offshore service providers sent the requested documents, including incorporation certificates and photocopies of drivers licences and passports for the persons acting as nominee officers and directors of the offshore corporations, all of whom were employees of the offshore service providers.<sup>1218</sup> By March 26, 2002, the only outstanding documents were W-8 forms needed for two accounts, Devotion and Relish.<sup>1219</sup>

At one point, Ms. Kellen compared the incorporation papers with the current account signatories, and noticed that the names of the listed persons were different. She asked Ms. Crittenden: “Are these folks employees of Trident Trust? Are they still involved in these entities? Does the ownership of these entities change hands often?” Ms. Crittenden responded: “I’m sure that in 1992 those people were employees of Trident as Francis and the others are now. I assume employment changes for these people as it does for all of us occasionally. If they are no longer employed by Trident, they would no

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<sup>1216</sup> 3/14/02 email from Laura Smith to Gerard Timmons (BA055891).

<sup>1217</sup> 3/15/04 email from Ms. Crittenden to Anna Benbatoul at IFG, Andy Wallis at InterContinental, and Francis Webb at Trident (BA055866).

<sup>1218</sup> For example, documents supplied for the Relish account included certified copies of the Relish incorporation certificate and articles of association, and photocopies of the Isle of Man passports of four IFG employees serving as Relish’s officers and directors. (BA043895).

<sup>1219</sup> 3/26/02 emails from Susan Stephenson at Bank of America to officials at BAS (BA075667-68).

longer be involved with said entities. . . . I don't believe the 'ownership' of the entities has ever changed."<sup>1220</sup> This email shows that BAS was fully aware that it was getting know-your-customer information for nominee officers and directors, rather than for the true beneficial owners of the offshore entities.

The 33 accounts for the Wyly-related offshore entities were opened by BAS in March 2002, about a month after Mr. Schaufele began employment there. Apart from the CDC background check on Sam Wyly, all of the know-your-customer documentation obtained by BAS related to Isle of Man and Cayman residents who had no beneficial interest in the account assets. None of the account opening documentation identified the Wyly family as the U.S. persons behind the offshore entities; none stated that the 33 accounts had been opened together and the entities were related to each other; and none named the beneficial owners of the accounts despite Patriot Act requirements due to go into effect a few months later.

**Beneficial Information for Tax Purposes.** Also in March 2002, in connection with the opening of the accounts for the Wyly-related offshore entities, Banc of America Securities secured a W-8BEN form from each account holder. All but one of the nominal account holders were Isle of Man or Cayman corporations; the remaining account holder was an Isle of Man trust. The W-8BENs were generally signed by one or more Isle of Man or Cayman nominee directors of the relevant offshore corporation certifying that the corporation was foreign and beneficially owned the account assets.<sup>1221</sup>

Evidence cited elsewhere in this Report indicates that Mr. Schaufele knew that the offshore corporations were paper operations with no employees or offices of their own, and that the Wyls and their representatives were directing their investment activities.<sup>1222</sup> Soon after beginning work at BAS, Mr. Schaufele commented to his superior when discussing the offshore entities: "I don't know how familiar you are with offshore corp. usually they are set up for a reason that being asset protection or tax deferral."<sup>1223</sup> Besides Mr. Schaufele, the evidence shows that other BAS personnel knew that the account holders were offshore entities, that the accounts were being processed as a group, and that they were associated with the Wyls, but there is little evidence that

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<sup>1220</sup> 3/27/02 emails between Ms. Kellen and Ms. Crittenden (BA055795).

<sup>1221</sup> See, e.g., W-8BEN for Relish Enterprises, Ltd. (BA044220).

<sup>1222</sup> See Report section on Converting U.S. Securities into Offshore Cash, above.

<sup>1223</sup> 3/8/02 email from Mr. Schaufele to Ms. Kellen (BA056096).

Mr. Schaufele's BAS colleagues pressed him to explain or detail the relationship between the Wylys and the offshore entities.

For tax purposes, BAS accepted the W-8BEN forms provided by the Wyly-related offshore entities and apparently did not file any 1099 forms with the IRS reporting their account income.

**(c) NFS Requests Beneficial Ownership Information**

The Wyly-related offshore entities opened 33 accounts at Bank of America in March 2002. More followed in the following months. All were securities accounts in the Banc of America Securities division. All were opened and administered by Mr. Schaufele and his team, Michele Crittenden and Virgil Harris, each of whom was employed by the BAS Private Client division and reported to the BAS sales department.

In August 2003, Bank of America decided to reorganize its brokerage operations. As part of that reorganization, it moved all non-institutional brokerage accounts, including the Wyly-related offshore accounts, from Banc of America Securities (BAS) to Bank of America Investment Services (BAI), its retail brokerage subsidiary. After the reorganization, Mr. Schaufele and his team members continued to manage the Wyly-related offshore accounts, but did so using BAI's systems. In addition, all three were moved to the Bank of America Private Bank. Mr. Schaufele reported to Lori Bensing, the Private Bank Sales Manager; her superior, Phil White, the Private Bank Market Executive, and his superior, Timothy Maloney, the Private Bank President for the Central Region.

One key difference between BAS and BAI was how they cleared their clients' securities transactions. While BAS had processed all of the securities transactions engaged in by its clients, BAI used an outside securities firm as its clearing broker.<sup>1224</sup> BAI's clearing broker was National Financial Services (NFS), which is a subsidiary of Fidelity Investments, a major securities firm. For this reason, after the

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<sup>1224</sup> Clearing brokers are often large securities firms that perform back-office and other services for other securities firms, including maintaining client records, executing client trades on the exchanges, and performing the withholding agent duties. They perform these services for "introducing" brokers who find and manage the client relationships, and contract with the clearing broker for the clearing services. Banc of America Securities cleared its own securities transactions, but Bank of America Investment Services contracted with an outside party to clear its transactions.



reorganization, BAI converted the Wyly-related offshore accounts to clear through NFS.<sup>1225</sup>

In response to the 2001 Patriot Act, NFS, with the support of its parent Fidelity Investments, initiated a major overhaul of its AML controls to strengthen its ability to monitor account activity and identify potentially suspicious transactions posing money laundering risks. Its new AML controls included an electronic surveillance component that could identify securities transactions that met certain parameters. For example, the surveillance system could identify wire transfers that exceeded a specified threshold amount, or account transactions that transferred cash or securities by journal entry to an apparently unrelated account. Transactions that met these and other specified parameters were automatically listed on an AML "exception report" that NFS compliance personnel then examined and attempted to resolve. Typically, NFS personnel asked the broker handling the customer relationship for additional information about the transaction in question. If NFS was unable to obtain information resolving its concerns, NFS could refuse to clear the account, either by limiting or freezing permitted transactions or by closing the account altogether. This system was already in place when Bank of America moved the Wyly-related offshore accounts to BAI in August 2003. Soon after the accounts were switched, they began setting off AML alarms within the NFS surveillance system due to wire transfers and journal entries involving millions of dollars.

In September 2003, for example, NFS asked BAI about \$432,000 in wire transactions between Ms. Boucher and three offshore entities named Two Oceans, Brown Dog, and Altonco.<sup>1226</sup> This inquiry produced a flurry of emails and a due diligence investigation by NFS between September 12 and November 20, 2003, over the beneficial ownership of those accounts and their relationship to Trident Trust.<sup>1227</sup> The issue was apparently resolved after Ms. Boucher disclosed that the corporations were under her direction.

In January 2004, the NFS surveillance system flagged transactions involving Devotion. An NFS risk analyst asked BAI about the account, pointing out that Devotion was an offshore corporation in the Isle of

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<sup>1225</sup> 8/20/03 email from Tara Hall at Bank of America to Ms. Crittenden with a list of NFS clients (BA073178-85).

<sup>1226</sup> 9/12/03 email from NFS to BAI (BA007670).

<sup>1227</sup> See 9/22/03 email from Scott Chandler to Denise Wollard (BA057379-80) ("Michele Boucher is the Directorate of the corporations listed below."). See also 11/5/04 letter from Ms. Boucher to BAI (BA148314-15) (disclosing she beneficially owned the three corporations).

Man, held mostly cash in its securities account, engaged in minimal investment activity, and engaged in numerous wire transactions with apparently unrelated parties, including the LaFourche Trust, Red River Ventures I, and Queensgate Bank and Trust.<sup>1228</sup> NFS asked a series of questions, including why the account was acting like a money conduit, what the relationship was between the account and the third parties, and the identity of the beneficial owner. NFS asked BAI not to alert the customer to the NFS inquiry and requested a response in ten days. (BA008159).

BAI discussed the account internally, but did not respond to NFS until NFS sent a followup request two weeks later. In response, BAI produced account records, a copy of the W-8BEN for the account, and a copy of Devotion's articles of incorporation. It also offered the following explanation:

"Devotion Ltd. is an offshore corporation (Incorporated in the Isle of Man), which serves as an investment entity. The beneficial owner of the entity is an offshore grantor trust . . . the beneficiaries of which are U.S. individuals. The securities in the account are owned by the entity. The relationships to the third party groups referenced in the e-mail we believe are strictly for investment purposes (both incoming and outgoing wires). We believe the entity would have no problem in providing additional details, in a macro-sense (ex. Real estate purchase, etc.) for what the wire transfers are for."<sup>1229</sup>

**Resisting Disclosure of Beneficial Owners.** In February 2004, NFS and BAI began a discussion that was to consume most of a year regarding the beneficial ownership of not only the Devotion account, but a widening number of accounts held by the Wyly-related offshore entities. Essentially, through increasingly senior officials at both companies, NFS pressed for the names of the beneficial owners of the accounts, but BAI resisted demanding the information from its clients. Compliance personnel, lawyers, brokers, and private bankers got involved. BAI's key broker, Mr. Schaufele, told the trust protector, Ms. Boucher, and the trustees, orally and in email communications, that the bank needed the beneficial ownership information, but the offshore entities steadily resisted providing it. BAI finally sent a written request for the information in October 2004. The offshore entities responded

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<sup>1228</sup> 1/15/04 email from NFS risk analyst Zach Pinard to BAI ( BA008159).

<sup>1229</sup> 1/29/04 fax from Margo Hursh of BAI Compliance, to Zach Pillard (BA007849).

with a letter asking why the information was needed, what it would be used for, and what steps Bank of America would take to protect its confidentiality. By then, the Manhattan District Attorney had served subpoenas on the Bank seeking information about the accounts held by the Wyly-related offshore entities. By the end of 2004, Bank of America closed the accounts.

The beneficial ownership debate began in early February 2004, when BAI's own compliance personnel inquired about six accounts for offshore entities called Balch, Bubba, Elegance, Katy, Quayle, and Soulieana. All six had appeared on BAI's Large Margin Debit Report, because they all had large positions in Michaels stock. BAI compliance asked BAI's business unit about any relationship between the accounts and the reason for the concentrated position in Michaels stock.<sup>1230</sup> At about the same time, NFS asked BAI compliance for information about the same accounts. BAI responded that it was already examining the accounts internally.<sup>1231</sup> On February 18, BAI told its compliance personnel the following:

"Each account is a separate corporation. There is no relationship between the corporations other than the original grant of options of Michael's Stores from the grantor to set up the corporations. These are offshore corporations which serve as investment entities. The beneficial owners of the entities are offshore grantor trusts . . . the beneficiaries are U.S. individuals."<sup>1232</sup>

Handwritten notes on the February 18, 2004, BAI compliance department email suggest that Mr. Schaufele or his team had disclosed that the trust beneficiaries were Wyly heirs, but stated there was no Wyly control of the stock.

BAI compliance forwarded the email describing the accounts to NFS Compliance which immediately asked additional questions about the accounts:

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<sup>1230</sup> 2/6/04 email from Steven Hudgins, BAI Compliance officer, to Denise Wollard, BAI Market Administrative Manager (BA012815).

<sup>1231</sup> 2/18/04 email from Margo Hursh of BAI Compliance, to Denise Wollard, BAI Market Administrative Manager (BA008301).

<sup>1232</sup> 2/18/04 email from Denise Wollard, BAI Market Administrative Manager, to Steven Hudgins, BAI Compliance (BA007969-71).

"I do have more questions. If all the accounts were funded by the same 'grantor', then they are all related in that aspect. I guess I would want to know the following:

- 1) Where did the original stock options come from?
- 2) Who/What acted as the 'grantor' of the stock options? If an entity deposited the shares, who was the owner of the entity?
- 3) Who are the beneficial owners of all of the grantor trusts?
- 4) Copies of the account applications, W8-IMY information for the grantor trusts, and if information is being held on the grantor trusts themselves, I want to see that information to determine which US individuals are the owners of these accounts.

My concern is that I do not believe that this company is reporting the ownership of the shares adequately. The fact that they are all being treated as separate companies does not impact the matter because they clearly have a link due to the original deposit. In addition, some of the accounts also maintain a control relationship even as independent accounts. Therefore, an account like P86017043 (Quayle Ltd), which made a sale of 100,000 shares of Michael's on 09/02/03 should have filed a form 144 with the SEC because of their control relationship before the sale. Do we have a copy of that form on file? This is an important issue that I do not believe can be explained in a paragraph and without documentation. I know that this issue will take a lot of time to resolve, but I do not believe that we understand their business, and I want to make sure they are in compliance with SEC regulations. Thank you for the preliminary information."<sup>1233</sup>

BAI compliance sent the NFS questions to BAI who promised answers as soon as possible.

Discussions about the accounts appear to have taken place over the next few days. On March 8, 2004, Mr. Schaufele received the following message from his supervisor, Lori Bensing:

"Of the 11 accounts that hold concentrated Michaels positions, I need to understand the relationship between them better. I thought that they had all been set up separately but today we got instruction to sell in Elegance and send the

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<sup>1233</sup> 2/18/04 email to Margo Hursh of BAI Compliance from Zach Pinard at NFS Compliance (BA007969).

proceeds to Souliana to 1) pay off margin debt 2) add to the operating account at Citibank. Can you explain it to me again?" (BA006231).

Mr. Schaufele apparently responded that all the Wyly offshores bought Michaels options at the same time, in 1992 and 1995, and then purchased the stock outright in 1997 and 1998, because Ms. Bensing provided that information to BAI compliance on March 11.<sup>1234</sup> Handwritten notes on one copy of this email state: "What/who really owns the 'accts' and "3/17/04 Margo – Chairman of Board – Michael's – Charles Wyly. they think he is the common thread in all these accts."<sup>1235</sup>

Two weeks later, both NFS and BAI elevated the issue within their organizations to more senior personnel. NFS Compliance sent an email to the NFS Director of Client Services, alerting him to the beneficial ownership issue and the 11 accounts then in question: Balch, Bubba, Devotion, Dortmund, Elegance, Flo Flo, Katy, Pops, Orange, Quayle, and Soulieana.<sup>1236</sup> He, in turn, sent the account list to the BAI Group Operations Manager, Tom Wiegand, asking him to address the issue.<sup>1237</sup> Mr. Wiegand forwarded the list to the BAI Deputy Director of Compliance, Geoff Rusnak<sup>1238</sup> who, in turn, sent it to BAI's General Counsel Barry Harris. Mr. Harris apparently requested an explanation from the Private Bank and received the following explanation from Lori Bensing:

"At conversion, Barry you may remember that we got approval to hold several Isle of Man accounts. We have been experiencing a lot of difficulty with NFS on these accounts since conversion and in particular 10 accounts that hold MIK stock (Michael's Stores). These accounts were created a number of years ago by trusts and according to the directorate the accounts share several of the same beneficiaries (various Wyly Family members and various charities). In short, NFS thinks that there might be Patriot Act issues and that the stock might be affiliated in some way. MUCH of their

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<sup>1234</sup> 3/11/04 email from Ms. Bensing to Steven Hudgins of BAI Compliance (BA007968).

<sup>1235</sup> See 3/11/04 email copy belonging to Denise Wollard (BA008300)(emphasis in original).

<sup>1236</sup> 3/25/04 email from NFS risk analyst Zach Pinard to NFS Director of Client Services Steven Worthy (BA029445-46).

<sup>1237</sup> Id.

<sup>1238</sup> 3/25/04 email from Mr. Wiegand to Mr. Rusnak (BA029445).

misunderstanding stems from a general lack of knowledge of the purpose and benefits of offshore accounts. The stock transferred in as clean stock but if need be we can go to corporate counsel for Michaels and get an opinion (1.7mm shares total) or statement that the shares are not affiliated. We can also go to the Isle of Man attorney for these accounts and get some letter that states that the beneficiaries are not terrorists. What we probably cannot do is get a list of the names, addresses and social security numbers of the beneficiaries. I am afraid that if we can't provide this that they may tell us to move the accounts. We may need someone from legal to help us with this (I should mention that BAI compliance is satisfied). Your thoughts?"<sup>1239</sup>

BAI's General Counsel responded that, on the securities issue, NFS would probably be satisfied with a written legal opinion that the stock was neither control stock held by an affiliate nor restricted, but that the Patriot Act issue was more problematic. "I believe that our policies require that we know the I'd [identity] of all beneficiaries as required by law. If the trustees or beneficiaries are unwilling to disclose, I believe that leaves us and NFS with little option."<sup>1240</sup> Mr. Schaufele asked in response whether it would be sufficient to say that the trust beneficiaries were members of the Wyly family subject to the discretion of the trustees. Mr. Harris replied that BAI needed specific names in order to do the necessary background checks.<sup>1241</sup> Mr. Schaufele held a conference call with the trust protectors and legal counsel, and passed on the trust protectors' question as to what would be done with the beneficial ownership information.<sup>1242</sup> When told the names would be run through databases "to check for drug dealers and terrorists and the like," Mr. Schaufele replied: "then I don't think it is that big of a problem, they just want to talk about it, confidentiality is HUGE."<sup>1243</sup>

On March 31, 2004, Ms. Bensing asked Mr. Schaufele to find out if BAI could get the specific names of the beneficial owners of each of

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<sup>1239</sup> 3/25/04 email from Lori Bensing to Barry Harris, BAI General Counsel, and Mike Hearn, BAI Counsel, with copies to Mr. Schaufele and others (BA006209).

<sup>1240</sup> 3/25/04 email from Mr. Harris to Ms. Bensing and Mr. Hearn, with copies to Mr. Schaufele and others (BA029540).

<sup>1241</sup> 3/26/04 email from Mr. Harris to Mr. Schaufele, Ms. Bensing, and Mr. Hearn (BA006208).

<sup>1242</sup> 3/31/04 email from Mr. Schaufele to Ms. Bensing (BA079633).

<sup>1243</sup> 3/26/04 email from Mr. Schaufele to Mr. Hearn (BA079635-37)(emphasis in original).

the 11 accounts.<sup>1244</sup> Mr. Schaufele immediately responded: “as it stands right now, No on beneficial owners but supposedly the certification draft letter is forthcoming as is the Michaels Stores opinion of counsel.” (BA029708) He sent a second message a few minutes later: “What I would like to do is to arrange a conference call with the trustees to talk about the certification letter and seeing how we could come to some resolution. Someone needs to ask the question what about the other Isle of Man accounts we have? NFS does have other accounts in IOM and I bet in other tax jurisdictions.” (BA079633) On April 1, 2004, 20 “certification letters” arrived on behalf of 20 IOM entities managed by IFG, including the 11 with Michaels stock. The letters certified that IFG had done its own “usual accepted Anti-Money Laundering checks” on the beneficial owners of the offshore entities, and stated that all results were satisfactory, but did not disclose any specific names. (BA008241-60)

Throughout April, NFS continued to press for the beneficial ownership information. As of April 16, NFS had told BAI that it was “in serious jeopardy of [NFS’] totally shutting down the accounts – not just commissions but ALL ACTIVITY.” (BA029766)(Emphasis in original). On the same day, a lawyer from Bank of America (Corporate)(BAC), Philip Wertz, spoke to Ms. Boucher about the need to supply the names.<sup>1245</sup> Ms. Boucher indicated that providing the names of the beneficial owners would not be a problem, but that it would take between four days and two weeks to get the information together. On April 19, NFS asked BAI to supply the information no later than April 30.<sup>1246</sup> Mr. Schaufele’s assistant commented that “4 days would be great. 2 weeks from today is May 3. I can’t control NFS but I will tell you that my sense is that we are down to our last chance. All we can do is relay the sense of urgency to her, I guess.”<sup>1247</sup> Mr. Schaufele replied: “We are making a sale today for Dortmund of [Michaels stock] (6800shs). They have a capital call for another investment. Can you make sure NFS is not going to hang up the funds as we will be getting the beneficial owners (my understanding).”<sup>1248</sup>

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<sup>1244</sup> Ms. Bensing was passing on a request from Steve Hudgins of BAI Compliance: “I just received word from NFS regarding the Michaels Stores accounts. They need the following information: . . . The specific names of the beneficial owners for each of the accounts. (I believe there are 11 total accounts.) Please respond as soon as possible.” (BA029708).

<sup>1245</sup> 4/19/04 email from Ms. Crittenden to Mr. Schaufele (BA080020).

On April 23, 2004, Mr. Schaufele began exploring the possibility of moving the Wyly offshore accounts back to BAS, which cleared its own transactions, did not use NFS, and might ask fewer questions. His initial communication with a BAS acquaintance elicited the response that BAS' due diligence requirements "may not be dissimilar to NFS or others on the street." (BA007700). Mr. Schaufele continued to press for a return to BAS over the next few weeks, contending that the accounts wanted to engage in the type of derivative transactions handled by BAS, and would generate sufficient fees to justify the work it would require for that division to take on accounts.<sup>1249</sup>

Ms. Boucher was supposed to be gathering the beneficial ownership information, but at the same time was suggesting alternatives to full disclosure. One suggestion she offered was to give the beneficial ownership information to a third party, which would do the due diligence checks and certify to BAI that there was no problem. The third party she suggested was Scottish Re,<sup>1250</sup> the Cayman insurance conglomerate once owned by the Wyllys and still run by Michael French, who was once a trust protector for the Wyly-related offshore trusts. Mr. Schaufele explained to Philip Wertz of BAC's legal department why Ms. Boucher was comfortable with Scottish Re, but did not disclose the company's relationship to the Wyllys:

"She has a history with Scottish and would be comfortable in their acting in some sort of capacity. Her problem with us is that she knows us, but is unable to ascertain if we can keep the information confidential (she understands that we would give up on legal inquiry). . . . I hope that the Scottish Re is a viable option. I understand that when you all spoke it was mentioned that we could allow a US regulated financial institution to act in some capacity so perhaps that can work. Scottish has a US sub in Charlotte."<sup>1251</sup>

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<sup>1249</sup> See, e.g., 4/29/04 email from Mr. Schaufele to Ms. Boucher (BA079968) ("Let me say this, if we were to enter into some type of forward sale with any of the entities that stock would be moved out of BAI (this is where you are now) and into BAS. I do not think we would have the beneficiary issues. I know this is nuts but BAS deals more with offshore than BAI (yes, we are the same company??? go figure)"); 5/10/04 emails from Mr. Schaufele to BAS personnel (BA005632; BA079577) ("I talked to Sam Hocking (prime) about opening accts on his platform. He can but says Innes really wants accts to generate revs, can you speak to Chris and explain situation to see if he is OK with that? . . . The only thing [requiring effort] is just holding the MK. I have told offshore if we do this we need to do a fwd to help pay for having accts at prime.").

<sup>1250</sup> 4/27/04 email from Ms. Boucher to Ms. Crittenden (BA069251).

<sup>1251</sup> 4/29/04 email from Mr. Schaufele to Philip Wertz, BAC legal department (BA079964-65).



BAI's legal department declined to use Scottish Re, noting that insurance companies were not subject to the same Patriot Act rules as banks and brokers, and expressing doubt that NFS would be willing to rely on a third party. Mr. Schaufele forwarded the legal department's reaction to Ms. Boucher, adding: "I don't think Scottish Re is going to work."<sup>1252</sup>

Ms. Boucher's second suggestion was to provide the names of the beneficial owners to BAI, but not to NFS. She proposed that, in lieu of receiving the names, NFS receive a certification from BAI that BAI had obtained the names and were comfortable with them. BAI forwarded this suggestion to NFS which promised to respond by April 29.<sup>1253</sup> On that date, NFS sent the following message to BAI:

"Sorry to be the bearer of bad news, but regarding the [Michaels] accounts, I confirmed with our Anti-Money Laundering Officer at NFS that we are not comfortable with not receiving the names of the beneficial owners. By not knowing the names of the beneficial owners does not allow us to fulfill our Patriot Act obligations. I am also being told by my AMLO [Anti-Money Laundering Officer] that this is the last time that they will be asking for these names. Please supply this information to myself by end of day tomorrow."<sup>1254</sup>

The message was forwarded to Mr. Schaufele, adding: "NFS's position is they insist on the names themselves."<sup>1255</sup>

Mr. Schaufele's reaction was immediate:

"That is not what we wanted to hear. I guess the next question is whom can we appeal this to. It is amazing to me that a third party can be used in some cases and that NFS won't let BAI act as that third party. In talking with the client they are very concerned over NFS having this information. I think they are +90% in giving us the

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<sup>1252</sup> 4/29/04 email from Mr. Schaufele to Ms. Boucher (BA079964).

<sup>1253</sup> 4/28/04 email from Jaidip Chanda of NFS to Ms. Bensing of the Private Bank (BA087455).

<sup>1254</sup> 4/29/04 email from NFS to Mr. Weigand, BAI Group Operations Manager, Ms. Bensing of the Private Bank, Michael Hearn and Philip Wertz of the BAC legal department (BA029435-38).

<sup>1255</sup> 4/29/04 email from Mr. Wertz to Mr. Schaufele and Ms. Crittenden (BA029435-38).

information they just don't want NFS to have it. Their reasons are their own but I suspect that they are concerned over NFS and have no operating history with them. I would like to appeal this decision on the basis that if my client gives us the required information (beneficiaries) and we are comfortable on the securities side (letter from company that this is not affiliate stock) that we tell NFS that we are satisfied with the AML and securities issues. I get the sense that NFS has other issues here than AML, those being security issues with the MIK. Why wouldn't a letter from company counsel or lawyer saying this is not affiliate stock and independently owned be sufficient. Why this would not be enough is amazing. We are NFS' largest client. This is a very large relationship to BAI and the bank. I really don't want +100mm of assets to leave. Please let me know." (BA066900).

BAI personnel worried that, if the beneficial ownership information were not supplied by the next day, the accounts would be restricted from all activity but closing transactions and withdrawals.<sup>1256</sup> That evening, however, the BAC legal department announced that NFS had agreed to forgo taking immediate action to close the accounts, while reserving the right to do what they deemed appropriate if additional questionable transactions surfaced:

"Here is where we are with the Michaels accounts. I understand that Michele Boucher has agreed to give Bank of America the beneficial ownership information, and has requested that we sign a confidentiality agreement. I have sent a brief draft to the sales folks and hopefully that can be worked out by tomorrow afternoon. I spoke with Jai Chanda and Carl Brown at NFS and they understand that we will not be sharing the beneficial ownership information with them. They said that the accounts will not be closed and no restrictions would be placed on the accounts. We are not giving them at this time a formal reliance agreement of any sort. Given that they will not have all the information we have in their files, if they flag transactions or issues that raise questions or concerns, Bank of America staff may from time to time have to have discussions to try to make them comfortable that transactions are appropriate and not suspicious. If NFS cannot get comfortable on any given issue, they may do what they feel they need to do to comply

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<sup>1256</sup> 4/29/04 email from Steven Hudgins to Ms. Bensing (BA029435-38).

with their regulatory requirements and procedures. I was assured that such actions would not include putting restrictions on accounts or closing accounts without dialogue with Bank of America and an opportunity to work through the issue. Long story short, we should still get the beneficial ownership information as soon as possible, but we are not facing an ultimatum from NFS about account closure anymore.”<sup>1257</sup>

To carry out Bank of America’s end of the deal, on May 6, 2004, Mr. Schaufele sent the following request to David Harris at IFG:

“[W]e request that you deliver to us the names and city, state and country of residence of all entities or individuals who directly or indirectly are beneficial owners of the accounts. We are requesting this information in order to fulfill our obligations under Bank of America’s know-your-customer policies and procedures. These policies and procedures are part of Bank of America’s anti-money laundering and anti-terrorism financing program that has been implemented in order to comply with applicable United States law, including the Bank Secrecy Act (as amended by the USA PATRIOT Act). I am sorry for the inconvenience but this appears out of my control.” (BA080144).

On the same day he made this demand for specific information on behalf of BAI, Mr. Schaufele was engaged in email and telephone discussions with Mr. Harris and Michelle Boucher in which he suggested that they might try to satisfy BAI with a response that was more vague and did not tie specific names to specific accounts.<sup>1258</sup> He also told Ms. Boucher that he was still pursuing moving the accounts back to BAS and cautioned her to make sure she had a back up plan in case BAI restricted the accounts.<sup>1259</sup> Mr. Schaufele also suggested that IFG might be able to justify withholding the names of the beneficial owners by contending such a disclosure would violate Isle of Man law. He wrote that he had just spoken with Philip Wertz in the BAC legal department about this possibility:

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<sup>1257</sup> 4/29/04 email from Mr. Wertz (BA087648). Ms. Bensing replied: “is this the part where I respond ‘you’re my hero’?” (BA087648).

<sup>1258</sup> 5/6/04 email from Mr. Schaufele to Ms. Boucher (BA080141).

<sup>1259</sup> 5/6/04 email from Mr. Schaufele to Ms. Boucher (BA080144).

“Can you get me a couple of things: We are going to go to our int’l attorney and ask about a IOM law that might prohibit them from releasing the names. You used a term for some law you had in Cayman’s but anything you can get me will be great (if possible today on this). Also can you get Meadows Owens to give me a brief legal note as to why they feel you cannot give the names up voluntarily. I think if he saw this argument this would help immensely. Also if you have opened accounts elsewhere recently and they have not required owners if appropriate what firms did this as maybe we could ask their legal as to why or how they see it that it is not needed (you may feel not appropriate and I understand).”<sup>1260</sup>

Mr. Schaufele later wrote to Mr. Wertz: “Michelle is getting us something from Meadows Owen and also on the IOM. The term that she spoke of in the Caymans was a law regarding the preservation of the confidentiality relationship. She said they have something like it in IOM but in banking law and she is getting. As an aside they have opened accounts in the last 6 months they have opened accounts with Morgan Stanley and US Bancorp.”<sup>1261</sup> Mr. Wertz replied: “According to our IPB attorney, Caymans (and likely IOM) do have confidentiality laws that state unauthorized disclosure of client information is prohibited. In order to give the names, the trustee/director may need to get consent of their beneficiaries to do it. Our Cayman’s trust office goes through this as well. We’ll see what they say, but I still think it is more based on not wanting to give the information rather than not able to.”<sup>1262</sup> In response to this last comment, Mr. Schaufele told Ms. Bensing that the legal confidentiality issue had been raised by the Isle of Man administrators: “Phil is correct, these folks do not want to give the names. As a last resort they were and then found that there are adverse legal effects if they did. Boucher is getting supporting docs on this. One thing you might mention to Phil /which I alluded to) is that the probable beneficiaries are extremely large PB [Private Bank] clients (my guess is +Imm revs. Obviously we don’t know the exact beneficiaries but good idea . . .”<sup>1263</sup>

On May 11, 2004, Mr. Schaufele received a letter from IFG, then the offshore trustee, declining to provide the requested beneficial

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<sup>1260</sup> 5/6/04 email from Mr. Schaufele to Ms. Boucher (BA080139).

<sup>1261</sup> 5/6/04 email from Mr. Schaufele to Mr. Wertz (BA080138).

<sup>1262</sup> 5/6/04 email from Mr. Wertz to Mr. Schaufele (BA080138).

<sup>1263</sup> 5/6/04 email from Mr. Schaufele to Ms. Bensing (BA080138).

ownership information. The letter cited a legal opinion that Isle of Man confidentiality laws prohibited them from providing the requested information.<sup>1264</sup> Upon receipt of the IFG letter, Mr. Schaufele asked Ms. Bensing at the Private Bank about involving upper management at BAI in a business decision to override the BAI compliance and legal offices and retain the accounts: "It seems to me that we are at somewhat of a standoff. I think at some point management (as opposed to legal) is going to have to weigh in on this. I don't know at what level . . . Phil White [Market Executive] or Tim [Maloney – Private Bank Regional President]. Could you talk to Phil White and just bring more in the loop."<sup>1265</sup>

On May 12, Mr. Schaufele sent his own email to Mr. White, laying out the case that the Wyly-related offshore accounts should be made an exception to the rule:

"[H]ere are what I believe are the salient points:  
1) If Phil W. is pressed he thinks we are OK on this one (more worried on future situations)

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<sup>1264</sup> The 5/11/04 letter from IFG stated in full:

"We refer to your email of May 6. We have sought advice from our Advocates in relation to your request and a copy of their letter of today is attached for your information. In view of this advice we regret that we are unable to comply with your request.

"We would add that we have already confirmed to you that we hold all appropriate due diligence information on these clients as confirmed to you in our letters of 31 March 2004. As stated in our letters of 31 March 2004 the Isle of Man is a FATF approved jurisdiction which is substantially in compliance with all FATF/IMF AML requirements, indeed probably to a greater extent than those currently operating in the USA." (BA007781).

The opinion of counsel stated:

"We understand that you have been asked by a foreign banking institution for details of the underlying persons beneficially interested in certain companies administered by yourselves which companies are owned by trusts of which you are trustees.

"We can confirm that, as trustees, you have, under Isle of Man law, a fiduciary duty of confidentiality which may prevent you from complying with such requests.

"In addition, a dissemination of confidential client information may involve a breach of the Isle of Man Data Protection laws which carries criminal sanction.

"We would be happy to advise more fully upon receipt of further details." (BA008234).

<sup>1265</sup> 5/11/04 email from Mr. Schaufele to Ms. Bensing (BA007707).

2) I have done business with these accounts since the early 90's

3) While I do not know for a fact the beneficiaries my guess is that they are members of the Wyly family. The Wyly family **pays fees to the Private Bank of over 1.2mm per year.** This does not include what they do in PCS. Nor does any of those numbers include what the offshore accounts produce. Bottom line is that the trustees generally do not involve the beneficiaries in the operation of the offshores but should they inform them of this development we could potentially lose the onshore family relationship (I doubt this, but it could happen).

4) We know that entities like this have opened accounts recently with Morgan Stanley and US Bancorp without this problem. We are also told by Prime (who has 2 accounts that are very similar to the ones in questions) that they could open these accounts. On that issue Phil Wertz disagrees but we have talked with Prime specifically on this.

5) The offshores have retained legal counsel on this (both US and IOM) and there are legal issues as to why they cannot divulge this aside from the fact that they believe there is no need. At one point we told them we were willing to let them divulge to US financial institution the names and then have that institution represent to us that there is no AML problems. They came back to us with Scottish Re (NYSE-SCT) but for whatever reason we took that off the table as an option.

6) We have a 300-400k collar pending with one of these entities.<sup>1266</sup>

"I think someone is going to have to make a management decision on this and move on. I do not want to see 50-75mm of assets move. The account wants to maintain our +10yr relationship but does have choice to move. Lori has worked very hard on this and I believe understands the issues, I just wanted to give you my overview."<sup>1267</sup>

On May 18, 2004, Phil White, the Private Bank Market Executive; Geoff Rusnak, BAI Deputy Director of Compliance; Mr. Wertz from the BAC legal department; Ms. Bensing from the Private Bank; and Mr. Schaufele held a conference call to discuss the beneficial ownership issue. In an email prior to the call, Ms. Bensing told Mr. Rusak: "We

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<sup>1266</sup> A collar is a stock option transaction that can produce significant fees for the broker that arranges it.

<sup>1267</sup> 5/12/04 email from Mr. Schaufele to Phil White (BA007708)(emphasis in original).

are basically at a point where what NFS wants (disclosure of the beneficial owners) is not going to happen because the client has been advised by their US and IOM counsel not to do it .... We have been told that Compliance will require someone from the business side (my [Market Executive]) to say that we are comfortable with the risk.”<sup>1268</sup> Mr. Rusnak, who had been out of the office for several weeks, wanted to know whether NFS had offered a solution as to how BAI could maintain the accounts without disclosing the beneficial owners. He said: “if we know the identity of the beneficial owners (which I recall you do), I am going to require (if we have not already done so) that we obtain any and all information regarding these beneficial owners and have Bank of America Corporate Security conduct complete due diligence reviews of these individuals.”<sup>1269</sup> Ms. Bensing replied:

“[NFS] will want assurance from our legal and compliance people that we are comfortable not documenting the beneficial owners. We were told who the beneficial owners were on a call by someone who apparently was not supposed to disclose them. Their counsel (both sides) will not allow it. Wertz has spoken directly with them and can explain the law surrounding this .... Our business decision (whether it comes from Phil or Tim [Regional President Maloney]) will be based on knowing this information and being comfortable with it on a business risk and client relationship.”<sup>1270</sup>

At the conference call, the group agreed to elevate the issue to BAI’s risk committee.<sup>1271</sup> Later, Mr. Rusnak from compliance and Mr. Wertz from the BAC legal department agreed to advise the committee that it was essential to secure the beneficial ownership information for the file because, in the event of a regulatory demand for the information, BAI could not rely on the client to produce it in the five days the law allowed to respond to the demand.<sup>1272</sup>

Prior to going to the risk committee, Mr. Schaufele contacted BAS legal counsel, seeking a different view of the due diligence rules, and was referred to Bank of America’s Assistant General Counsel, Daniel

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<sup>1268</sup> 5/18/04 email from Ms. Bensing to Mr. Rusnak (BA007709-10).

<sup>1269</sup> 5/18/04 email from Mr. Rusnak to Ms. Bensing (BA007709).

<sup>1270</sup> 5/18/04 email from Ms. Bensing to Mr. Rusnak (BA007709).

<sup>1271</sup> 5/19/04 email from Mr. Rusnak to Ms. Bensing (BA087370). A risk committee is a committee of executives that evaluates issues or transactions that could have a material impact on the company.

<sup>1272</sup> 5/20/04 emails between Mr. Rusnak and Mr. Wertz (BA087790).

Robey. In an email, Mr. Schaufele made the same points he had made in his May 12 email to Phil White. Mr. Robey responded that he would not second-guess BAI's counsel on the legal requirements applicable to BAI.<sup>1273</sup>

Mr. Schaufele then wrote to Mr. Wertz, in BAC's legal department, asking him if he would classify the need for beneficial ownership as a "gray" area, given that the final version of the Patriot Act regulations had not yet been issued.<sup>1274</sup> Mr. Wertz responded with a long email analyzing the Patriot Act and concluding that its requirements were not as gray as had been argued by counsel for the Isle of Man entities. The email shows that BAI viewed the accounts as private banking accounts opened for a non-U.S. person under Section 312 of the Patriot Act, which required BAI to "ascertain the identity of the nominal and beneficial owners ... of the account." The email stated that the legal counsel representing the offshore entities had argued that, for purposes of Section 312 in the Patriot Act, the account holders were "not necessarily a non-US customer if you drill down to the beneficial owners," presumably arguing that the beneficial owners were, in fact, U.S. citizens.<sup>1275</sup> Mr. Wertz disagreed with this analysis, and concluded that the only way to keep the accounts open without the beneficial ownership information was to make an exception for these accounts.<sup>1276</sup>

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<sup>1273</sup> 5/25/04 email from Mr. Robey to Mr. Schaufele (BA066886).

<sup>1274</sup> 5/25/04 email from Mr. Schaufele to Mr. Wertz (BA087785).

<sup>1275</sup> 5/25/04 email from Mr. Wertz to Mr. Schaufele (BA029518-20).

<sup>1276</sup> The email in its entirety is as follows:

"Set forth below is the relevant text of section 312 of Patriot Act. As the proposed regulations are not yet final, the interim rules state that we must apply with the statutory language itself. Section 3(A) is pretty clear about the need to identify beneficial owners. The proposed rules (which will eventually be finalized) would clarify some of the scope of the rules. For example, it provided that you need to identify the holders of beneficial ownership interests if they have a right to at least \$1MM or 5% of the value of the account (therefore setting a de minimus threshold).

"All of these rules are subject to interpretation and therefore it is difficult to say it is black and white, however, I don't think this is as gray as the [Michaels] counsel argues it is. They argued that it is not technically a "private banking account." They argued that it is not necessarily a non-US customer if you drill down to the beneficial owners. They argued that the family may not technically have "beneficial ownership interests" depending on how that term is defined. As pointed out to their counsel, the issue we face is that the Banking Regulators and Congress are interpreting the Patriot Act rules with a mindset that expects banks to not split hairs on technicalities and to go beyond the letter of the rules. When the final rules are published, I think they will be relatively consistent with the proposed rules. This was also the basis of our Corporate Policy. I would not feel comfortable advising the bank that our policy should eliminate the need for this



Mr. Schaufele forwarded this analysis to Charles Pulman, a Meadows Owens lawyer who sometimes represented the Wyly family and the offshore entities on tax matters. (BA080202).

To prepare for the upcoming risk committee meeting, Mr. Schaufele wrote an extensive email describing the history of his and the Private Bank's relationship with the Wyly family.<sup>1277</sup> This history, which was apparently jointly written by Mr. Schaufele and Marta Engram, the Wyly's private banker, stated that the Wyly family was well known to both of them, posed no money laundering risks, and was a major source of revenue for both the Private Bank and BAI.<sup>1278</sup> They also argued that the family lacked control over the offshore corporations, analogizing the trust protectors to a board of directors who could hire and fire the management of the offshore corporations. At another point, however, they stated that, "The Wyly family viewed the [offshore corporations] as one of their main investment vehicles." They concluded by asking BAI to make an exception to its AML due diligence

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information in all cases, so I believe you must argue that you have done enough to warrant an exception to the general rule.

"If the decision is made to keep the account open, we will take the position that we have sufficient information in the file and know enough overall to satisfy this legal obligation. Without the names themselves, I think there is a risk that we will be deemed to have not met that obligation under Section 312. Without the names themselves, there is also a risk that we are criticized because we are unable to screen these people against OFAC and other terrorist lists that are issued from time to time. None of those are guarantees of a legal violation or a regulatory sanction and therefore must be weighed by the business unit.

"I must admit that I have not heard any persuasive arguments from the client about why they should withhold the names, other than that they just want to maintain secrecy. I agree with the IOM counsel that the director couldn't give the names without consent of their clients, but I have confirmed that we get such consent all the time for offshore trusts that we manage when faced with such circumstances. Given how much we know about the family overall and your relationship with them, I don't understand why they would object if the director asked for their consent. [quotation of Section 312 omitted]" (BA029518-20).

<sup>1277</sup> 5/25/04 email from Ms. Crittenden to Mr. Schaufele (BA080216-18).

<sup>1278</sup> Mr. Schaufele wrote: "From a business perspective these accounts and the Wyly family are very profitable to the firm. We have an 800k share collar on with one of the OC [offshore corporation] entities and are working on another collar/forward that will probably be 500k shares. Aside from that the OC accounts produced +100k in business last year. Collectively they have around 50-75mm in assets here along with the potential of bringing other assets in. . . . We did a VERY profitably derivative trade in [SCT] warrants for another client and I think that when the OC decides to monetize we would get that business. The Wyly family itself is extremely profitable and long standing relationship with the bank (see Marta Engram's memo). Because of our relationship with the me [sic] the family has referred several pieces of business to me over the years, both onshore and offshore. The sale of the 450k SCT warrants were a result of this." Id.

policies in the case of the Wyly-related offshore entities and dispense with obtaining the beneficial ownership information.

On May 27, 2004, Phil White, the Private Bank Market Executive, submitted the following agenda item for the next day's risk committee meeting:

"WHAT: The directorates of the offshore trusts do not want to disclose the beneficial owners for two reasons: they are not being asked to do it anywhere else and they need confidentiality. We feel like we know enough about the clients and could defend that they are not persons of ill repute if the information was requested.

"IMPACT: We would definitely lose the offshore business to someone else which would open the door for another institution to take the loan and deposit business as well. These people are true PB [Private Bank] clients and very well known in the community."<sup>1279</sup>

The matter went to the risk committee on May 28, 2004. After hearing from representatives of BAI sales, compliance, and legal departments, the risk committee decided to reject the request to make an exception to the know-your-customer rules for the Wyly-related offshore entities, but also to raise the issue to more senior management and discuss it again the following week.<sup>1280</sup> The committee noted the following points as influencing their decision:

- BAI had a corporate policy of getting the names of all beneficial owners.
- The company was required to produce the information to a regulator within 120 hours of a request.
- Morgan Stanley did not grant exceptions to its similar policy.
- While no one suggested the Wyls were terrorists or drug dealers, AML is a focus of SEC, NASD, and the banking regulators. Sooner or later, NFS would file a suspicious activity report (SAR) on one of the accounts, that would

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<sup>1279</sup> 5/27/04 email from Phil White to Greg Strieby (BA086388).

<sup>1280</sup> 5/28/04 email from Craig Krapf to Nancy Yarbrough (BA113167).

lead a regulator to BAI, and the regulator would find that they had not followed their own policy.

- BAI had never made an exception to the policy before.<sup>1281</sup>

Upon learning of the risk committee's decision, Mr. Schaufele asked Mr. Wertz, in the BAC legal department, if it would help to get a letter from the offshore trustees agreeing to disclose the beneficiaries if BAI received a request from a regulator or if the law became "more definitive."<sup>1282</sup> Mr. Wertz responded that such a letter would not help because, once a request was received and the regulators found they did not have the information, the damage would be done. Mr. Wertz also stated that the trustees could not be relied on to produce the information, particularly with a quick turnaround: "What has been clear in my earlier discussions with their lawyers is that they philosophically take a different approach to interpreting what the law and regs say. They are not subject to the laws and have no regulatory compliance obligation, therefore, they are willing to take a very strict and narrow reading of the rules. ... I don't think the law will ever be clear enough such that the client and their lawyers concede that they have no choice but to comply."

In June 2004, BAI presented a proposal to NFS to have the offshore entities disclose their beneficial ownership to a law firm mutually agreed to by BAI and NFS.<sup>1283</sup> The law firm would conduct a due diligence review and report the results, but not the names, to BAI and NFS. The law firm would retain the names, subject to the attorney client privilege, and release them to BAI only in the event of a regulatory inquiry or the adoption of regulations clearly requiring BAI to collect the names. These activities would be performed at the Wyllys' expense. This proposal was presented to the risk committee, at which time BAI's General Counsel Barry Harris was assigned to discuss the proposal with NFS.<sup>1284</sup>

Mr. Harris met with NFS representatives on June 15, and reported that NFS' concerns were broader than customer identity. He said that their concerns included:

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<sup>1281</sup> Handwritten account of Risk Committee meeting dated 5/31/04 (BA007792).

<sup>1282</sup> 6/1/04 emails between Mr. Schaufele and Mr. Wertz (BA082073).

<sup>1283</sup> Series of emails, dated 6/3/04 to 6/7/04, involving Barry Harris, BAI General Counsel, Timothy Maloney, Private Bank President for the Central Region, and others (BA087178-81).

<sup>1284</sup> BAI Risk Committee Minutes dated 6/11/04 (BA042062-63).

“1. Customer id: they don’t know the basic info. required for money- laundering/OFAC/Patriot policies.

“2. They are concerned that the stock in the accounts is 144 or control [stock], given Mr. Wyley’s position. They question whether the US filings required of Michaels/Mr. Wyley require disclosure of these shares and, if so, were they in fact disclosed. They also question whether the stock is restricted by US laws.

“3. The accounts have been buying Michaels stock. They question the propriety of and filing requirements on such purchases.

“4. Money has moved from, into and between the accounts. The lack of information makes this very troublesome to NFS; even if they had the info., the movements and the fact that the accounts are Isle of Mann entities would hit tripwires in the NFS systems. Isle of Mann is a known haven for hiding ownership and assets, apparently.”<sup>1285</sup>

Since the proposal for using an outside counsel to process the beneficial owner information would not address these other concerns, NFS agreed to think about whether the proposal could be expanded to include certifications on the specified issues and provide their views in a week. Mr. Harris reported that NFS said, in their view, BAI as introducing broker should be more nervous about the accounts than NFS. They also indicated that, if any other activity in the accounts hit their compliance tripwires, NFS would be filing a Suspicious Activity Report with law enforcement.<sup>1286</sup>

On July 20, 2004, Mr. Harris met again with NFS which informed him that the outside attorney proposal would not satisfy their needs. He reported to the BAI risk committee that NFS had countered with the following proposal: “NFS will prepare written questions which they need answered to continue to support the accounts; BAI will add any questions which it believes need to be answered. I would forward the questions to the attorney representing the Wyley’s and the trusts, informing them that we and NFS need answers within 30 days, or it will be necessary to ask them to move the accounts to another BD [broker dealer] which can support them based upon the information which they

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<sup>1285</sup> 6/15/04 email from Barry Harris, BAI General Counsel, to Timothy Maloney, Private Bank President for the Central Region, and Michael Santos (BA148741-42).

<sup>1286</sup> Id.

are willing to share. I need your input on the proposal.” He also reported:

“I believe we have hit the wall. NFS is extremely nervous about these accounts, if not for actual violations of Patriot/AML, for negative regulatory action based on the lack of info. and activity. . . . If we proceed as suggested, we need to alert the PB [Private Bank] on the decision, and possibly seek their assistance in getting the necessary information from the Wyley’s.

“I share NFS’ concern that we are exposed here. While we frequently have the benefit of facts/knowledge of the PB in our AML due dilly efforts, we too don’t know the identities of the beneficiaries. I additionally am concerned that the PB doesn’t know of/is not involved in the sales and cash transfers, and therefore we have no comfort from that side.” (BA086801-03).

The NFS questions were supposed to be supplied by August 8, 2004. Because of scheduling conflicts, the list of questions was actually provided on September 22. In brief, the NFS questions sought identifying information for each direct account holder, each entity behind the direct account holders, and each natural person with an ultimate beneficial ownership interest in the account, as well as an explanation as to why so many entities were used by the same indirect owners and an explanation of the inter-account transactions. Additional questions sought information about whether the indirect beneficial owners were Michaels insiders and, if so, the reasons why Michaels stock was handled in the entity accounts in the manner that it was.<sup>1287</sup>

In addition, in late September or early October 2004, the Manhattan District Attorney served subpoenas on Bank of America seeking information about the accounts held in the name of the Wyley-related offshore entities.<sup>1288</sup>

BAI did not forward the detailed NFS questions to the account holders. Instead, on October 22, 2004, BAI sent identical letters to the four offshore trustees, IFG, Close Bank, Intercontinental Management, and Trident, and to Ms. Boucher, asking for the following information “for each entity, natural person or trust that directly or indirectly owns,

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<sup>1287</sup> 9/22/04 letter from Mr. Harris to Steve Ganis, Anti-Money Laundering Officer for NFS (BA086888-92).

<sup>1288</sup> Subcommittee interview of Bank of America (6/23/05).

controls or holds a beneficial ownership interest in whole or in part” in each of the offshore account holders:

- (i) Name,
- (ii) physical address (primary residence for individuals or primary business address for legal entities),
- (iii) date of birth (for individuals only), and
- (iv) identification number (a U.S. taxpayer identification number or social security number for a U.S. person; a U.S. taxpayer identification number, social security number or foreign government issued identification number (such as a passport number) for non-U.S. persons).

The letters requested the information by October 29, 2004.<sup>1289</sup>

In response, BAI received five substantially identical letters dated either October 28 or 29, 2004, asking BAI to clarify the following points:

- “Why the information is being requested.”
- “Under what legal authority is the request for this information being made, and provide us with a copy of such authority.”
- “How Bank of America intends to use this information, including to whom such information may ultimately be disseminated.”
- “The controls Bank of America undertakes to ensure the confidentiality and integrity of this information is maintained and provide us with a written description and confirmation that such controls are in place.”<sup>1290</sup>

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<sup>1289</sup> 10/22/04 letters from BAI to the four offshore trustees and Ms. Boucher (BA149362-71).

<sup>1290</sup> Letters dated October 28, 2004 from Irish Trust (BA149061,63) and Michelle Boucher (BA149062), and October 29, 2004, from Trident Trust (BA149060) and IFG International (BA149064-65). No responses appear to have been received from Close Bank or Intercontinental Management.

On November 8, 2004, BAI advised the Wyly-related offshore entities of its decision to close all of their accounts.<sup>1291</sup> The accounts were closed in about 30 days, with most securities and cash balances transferred to the Bank of Bermuda branch in the Isle of Man.

Bank of America reduced the bonuses of Private Bank President Alan Rappaport, Private Bank Regional President Tim Maloney, and BAI President Mike Santo. A subsequent review of records and inquiries made by the Subcommittee staff indicate that BAI General Counsel Barry Harris was not fired, as reported in an earlier version of the Subcommittee's report, but left the bank due to a bank merger.<sup>1292</sup>

#### **(d) Analysis of Issues**

The offshore entities that Louis Schaufele brought to Bank of America posed a classic anti-money laundering problem, clients who wanted to use the services of a U.S. financial institution to safeguard, invest, and transfer their funds, without telling the financial institution who they were. For U.S. banks, it has been settled law for years that offshore corporations and trusts must disclose the natural persons behind them to ensure that bank services are not being misused by criminals, terrorists, tax evaders, or other persons of concern. U.S. securities firms, until recently, operated with voluntary, rather than mandatory, requirements to identify the beneficial owners behind their accounts. By the time Bank of America opened accounts for the Wyly-related offshore entities in 2002, however, the Patriot Act had made it clear that U.S. securities firms were under the same legal requirements as U.S. banks to know their customers and safeguard the U.S. financial system from abuse.

In this case history, Bank of America was repeatedly told in an informal way that the offshore entities were associated with the Wyllys, but when it sought to get this information formally, by documenting the

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<sup>1291</sup> 11/8/04 letters from BAI to IFG, Close Private Bank, Trident Trust, and Intercontinental Management (BA149110-11, 14-15, 18-19, 22-23). In addition, on November 9, BAI advised Ms. Boucher of its intention to close accounts for three offshore entities associated with her, Altonco, Brown Dog, and Two Oceans. (BA149128-29) BAI made this decision even though, on October 29, 2004, it had asked her for information about these corporations (BA151499), and on November 5, 2004, she had responded with a strongly worded letter complaining of the unreasonableness of the BAI demand for beneficial ownership information, but nevertheless providing it. (BA148314-15) On November 12, 2004, Charles Pulman of Meadows, Owens wrote BAI on Ms. Boucher's behalf to demand the return of her November 5 letter and instructing the BAI not to "disclose that information to any person." (BA149164)

<sup>1292</sup> Subcommittee interview of Bank of America (6/23/05) and subsequent followup discussions.

beneficial owners of the accounts, the offshore entities refused to cooperate. Despite being pressed for nearly a year by its clearing broker, NFS, Bank of America never obtained the beneficial ownership information required by the Patriot Act. Bank of America also accepted, for tax purposes, the W-8BEN forms provided by the offshore entities representing that they were the beneficial owners of the account income, when the bank knew that U.S. taxpayers, the Wyllys, were directing the offshore entities' investments.

Had the offshore entities acknowledged, for anti-money laundering purposes, that the Wyllys were the beneficial owners of the accounts opened by the offshore trusts and corporations, it would have been harder for the Wyllys to disavow ownership and control of these same entities for tax and securities purposes. Perhaps that is why the offshore entities worked so hard to hide their beneficial ownership from Bank of America, despite the legal requirements of the Patriot Act.



**APPENDIX 1**  
**Wyly-Related Offshore Entities**

**Bulldog Non-Grantor Trust (PSI00007371-405)**

Established: 1992  
 Grantor: Sam Wyly  
 Beneficiaries: British Red Cross  
 Community Chest of Hong Kong  
 Sam Wyly issue  
 Merged: 2000 (with Bulldog II Trust)  
 Reconstituted: 2004  
 Corporations: East Baton Rouge Ltd.  
 East Carroll Ltd.  
 Locke Ltd.  
 Moberly Ltd.  
 Morehouse Ltd.  
 Richland Ltd.  
 Tensas Ltd.  
 West Carroll Ltd.

**Pitkin Non-Grantor Trust (PSI00009196-230)**

Established: 1992  
 Grantor: Charles Wyly  
 Beneficiaries: British Red Cross  
 Community Chest of Hong Kong  
 Charles Wyly issue  
 Merged: 2000 (with Pitkin Trust II)  
 Reconstituted: 2004  
 Corporations: Little Woody Ltd.  
 Maroon Ltd. (later named Rugosa Ltd.)  
 Roaring Creek Ltd.  
 Roaring Fork Ltd.

**Tallulah International Trust (PSI00009752-84)**

Established: 1992  
 Grantor: Sam Wyly  
 Beneficiaries: Sam Wyly issue  
 Terminated: 1996

**Woody International Trust (PSI00009819-53)**

Established: 1992  
 Grantor: Charles Wyly  
 Beneficiaries: Charles Wyly issue  
 Terminated: 1996

**Castle Creek International Trust (PSI00009011-46)**

Established: 1992  
Grantor: Charles Wyly  
Beneficiaries: British Red Cross  
Community Chest of Hong Kong  
Charles Wyly issue  
Merged: 2000 (with Pitkin II Trust)  
Reconstituted: 2004  
Corporations: Quayle Ltd.

**Delhi International Trust (PSI00009087-122)**

Established: 1992  
Grantor: Sam Wyly  
Beneficiaries: British Red Cross  
Community Chest of Hong Kong  
Sam Wyly issue  
Merged: 2000 (with Bulldog II Trust)  
Reconstituted: 2004  
Corporations: Greenbriar Ltd.

**Lake Providence International Trust (PSI00008151-85)**

Established: 1992  
Grantor: Sam Wyly  
Beneficiaries: British Red Cross  
Community Chest of Hong Kong  
Sam Wyly issue  
Merged: 2000 (with Bulldog II Trust)  
Reconstituted: 2004  
Corporations: Sarnia Investments Ltd.

**Bessie Trust (PSI00008897-953)**

Established: 1994  
 Grantor: Keith King, benefitting family of Sam Wyly  
 Beneficiaries: Keith King  
                   Sam Wyly, his wife and issue  
                   University of Michigan (added 12/7/97)  
                   Any First Church of Christ Scientist Church (added  
                   12/7/97)  
                   Communities Foundation of Texas (added 12/7/97)  
 Corporations: Audubon Assets Ltd. (formerly Fugue Ltd.)  
                   Cottonwood I Ltd.  
                   Cottonwood II Ltd.  
                   Mi Casa Ltd.  
                   Newgale Ltd.  
                   Rosemary's Circle R Ranch Ltd. (formerly Two  
                   Mile Ranch Ltd. and Woody Creek Ranch Ltd.)  
                   Spitting Lion Ltd.  
                   Yurta Faf Ltd.  
                   Balch LLC  
                   Bubba LLC  
                   FloFlo LLC  
                   Katy LLC  
                   Orange LLC  
                   Pops LLC

**Tyler Trust (PSI00006985-7042)**

Established: 1994  
 Grantor: Keith King, benefitting family of Charles Wyly  
 Beneficiaries: Keith King  
                   Charles Wyly, his wife and issue  
                   Any First Church of Christ Scientist Church (added  
                   3/6/97)  
                   Lady Thatcher's Archive at the Cambridge Foundation  
                   (added 9/14/99)  
 Corporations: Elysium Ltd.  
                   Gorsemoor Ltd.  
                   Jordan Way Ltd.  
                   Little Woody Creek Road Ltd.  
                   Ramona Ltd.  
                   Soulieana Ltd.  
                   Stargate Farms Ltd.

**Plaquemines Trust (PSI0006467-99)**

Established: 1995  
 Grantor: Bulldog Trust  
 Beneficiaries: British Red Cross  
 Community Chest of Hong Kong  
 Voided: 1999  
 Corporations: East Baton Rouge Ltd. (transferred from Bulldog  
 in 1995)  
 East Carroll Ltd. (transferred from Bulldog in 1995)

**La Fourche Trust (PSI00009130-58)**

Established: 1995  
 Grantor: Shaun Cairns, benefitting family of Sam Wyly  
 Beneficiaries: Sam Wyly and issue  
 Corporations: Devotion Ltd.  
 Relish Ltd.

**Red Mountain Trust (PSI00009235-63)**

Established: 1995  
 Grantor: Shaun Cairns, benefitting family of Charles Wyly  
 Beneficiaries: Charles Wyly, his wife and issue  
 Any First Church of Christ Scientist Church (added  
 3/11/97)  
 Shaun Cairns (added 9/16/00)  
 Corporations: Elegance Ltd.

**Arlington Trust (PSI00092920-51)**

Established: 1995  
 Grantor: Sam Wyly  
 Beneficiaries: Sam Wyly, his wife and issue  
 Terminated: 1996

**Crazy Horse Trust (PSI00009048-83)**

Established: 1995  
 Grantor: Sam Wyly  
 Beneficiaries: Sam Wyly, his wife and issue  
 Terminated: 1996

**Maroon Creek Trust (PSI00009886-917)**

Established: 1995  
 Grantor: Charles Wyly  
 Beneficiaries: Charles Wyly, his wife and issue  
 Terminated: 1996

**Lincoln Creek Trust (HST PSI004498-531)**

Established: 1996  
 Grantor: Charles Wyly  
 Beneficiaries: Charles Wyly, his wife and issue  
 Terminated: 1996

**Sitting Bull Trust (PSI00092969-3000)**

Established: 1996  
 Grantor: Sam Wyly  
 Beneficiaries: Sam Wyly, his wife and issue  
 Terminated: 1996

**Bulldog II Trust**

Established: 2000  
 Grantor: Sam Wyly  
 Beneficiaries: British Red Cross  
 Community Chest of Hong Kong  
 Sam Wyly issue  
 Merged: 2000 (with Bulldog Trust)  
 2001 (with Lake Providence and Delhi International  
 Trusts)  
 Voided: 2004  
 Corporations: East Baton Rouge Ltd.  
 East Carroll Ltd.  
 Greenbriar Ltd.  
 Locke Ltd.  
 Moberly Ltd.  
 Morehouse Ltd.  
 Richland Ltd.  
 Sarnia Investments Ltd.  
 Tensas Ltd.  
 West Carroll Ltd.

**Pitkin Trust II**

Established: 2000  
Grantor: Charles Wyly  
Beneficiaries: British Red Cross  
Community Chest of Hong Kong  
Charles Wyly issue  
Merged: 2000 (with Pitkin Trust)  
2001 (with Castle Creek International Trust)  
Voided: 2004  
Corporations: Little Woody Ltd.  
Maroon Ltd. (later named Rugosa Ltd.)  
Quayle Ltd.  
Roaring Creek Ltd.  
Roaring Fork Ltd.

[Copies of the trust documents retained in the files of the Subcommittee  
as Sealed Exhibits.]

**APPENDIX 2****Isle of Man Offshore Service Providers****Close Trustees Ltd. (Close)**

Key Personnel: Mark Lewin

Trustees For: Red Mountain Trust (2002-present)

**IFG International, Inc. (IFG)**

Key Personnel: David Harris

Anna Maria Benbatoul

Trustees For: Bessie Trust (1998-present)

Bulldog Non-Grantor Trust (1996-present)

Bulldog II Trust (2000-2004)

Castle Creek International Trust (2000-2004)

Delhi International Trust (2000-present)

Lake Providence International Trust (2000-present)

Pitkin Non-Grantor Trust (1997-2004)

Pitkin Trust II (2000-2001)

Plaquemines Trust (August 1995-2004)

**Inter-Continental Management Company Ltd. (Inter-Continental)**

Key Personnel: Colin Platten

Andy Wallis

Trustees For: LaFourche Trust (2001-present)

**Lorne House Trust Company Ltd. (Lorne House)**

Key Personnel: Ronald Buchanan

Keith L. King

Russell Collister

Trustees For: Bessie Trust (1994-1998)

Bulldog Non-Grantor Trust (1992-1996)

Pitkin Non-Grantor Trust (1992-1997)

Tallulah International Trust (1992-1996)

Tyler Trust (1994-1998)

Woody International Trust (1992-1996)

**MeesPierson/Valmet/Northern Bank**<sup>1293</sup>

Key Personnel: Andy Wallis

Trustees For: Arlington Trust (1995-1996)  
 Castle Creek International Trust (1992-2000)  
 Crazy Horse Trust (1995-1996)  
 Delhi International Trust (October 1995-2000)  
 Lake Providence International Trust (1992-2000)  
 Maroon Creek Trust (1995-1996)

**Trident Trust Company Ltd (Trident)**

Key Personnel: David H. Bester

Richard Scott

Francis Webb

Trustees For: Castle Creek International Trust (2004-present)  
 LaFourche Trust (1996-2001)  
 Lincoln Creek Trust (January-December 1996)  
 Pitkin Non-Grantor Trust (2004-present)  
 Pitkin Trust II (2001-2004)  
 Red Mountain Trust (1996-2002)  
 Sitting Bull Trust (January-December 1996)  
 Tyler Trust (1998-present)

**Wychwood Trust Ltd. (Wychwood)**

Key Personnel: Shaun Cairns

Trustees For: Delhi International Trust (March-August 1995)  
 LaFourche Trust (1995-1996)  
 Plaquemines Trust (February-August 1995)  
 Red Mountain Trust (1995-1996)

Janek K. Basnet, an Isle of Man resident who is not associated with any of the above offshore service providers, served briefly as a trustee for the Plaquemines Trust and the Delhi International Trust.

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<sup>1293</sup> Pierson Holding & Pierson (Isle of Man) Ltd. changed its name to MeesPierson (Isle of Man) Ltd. and is hereinafter referred to as MeesPierson. MeesPierson was sold to Valmet (Isle of Man) Ltd. in 1998, which was sold to Northern Bank Trust Company (Isle of Man) Ltd. in 1999. For ease of reference, the company is referred to as "MeesPierson/Valmet/Northern Bank "



**APPENDIX 3****Wyly Offshore Trusts and Their Trustees****Arlington Trust**

MeesPierson (1995-1996)

**Bessie Trust**

Lorne House (1994-1998)

IFG (1998-present)

**Bulldog Non-Grantor Trust**

Lorne House (1992-1996)

IFG (1996-present)

**Bulldog II Trust**

IFG (2000-2004)

**Castle Creek International Trust**

MeesPierson/Valmet/Northern Bank (1992-2000)

IFG (2000-2004)

Trident (2004-present)

**Crazy Horse Trust**

MeesPierson (1995-1996)

**Delhi International Trust**

Credit Suisse Trustees (1992-1995)

Wychwood (March-August 1995)

Janek K. Basnet (August-October 1995)

MeesPierson/Valmet/Northern Bank (October 1995-2000)

IFG (2000-present)

**La Fourche Trust**

Wychwood (1995-1996)

Trident (1996-2001)

Inter-Continental (2001-present)

**Lake Providence International Trust**

MeesPierson/Valmet/Northern Bank (1992-2000)

IFG (2000-present)

**Lincoln Creek Trust**

Trident (January-December 1996)

**Maroon Creek Trust**

MeesPierson (1995-1996)

**Pitkin Non-Grantor Trust**

Lorne House (1992-1997)

IFG (1997-2004)

Trident (2004-present)

**Pitkin Trust II**

IFG (2000-2001)

Trident (2001-2004)

**Plaquemines Trust**

Wychwood (February-August 1995)

Janek K. Basnet (August-October 1995)

IFG (November 1995-2004)

**Red Mountain Trust**

Wychwood (1995-1996)

Trident (1996-2002)

Close (2002-present)

**Sitting Bull Trust**

Trident (January-December 1996)

**Tallulah International Trust**

Lorne House (1992-1996)

**Tyler Trust**

Lorne House (1994-1998)

Trident (1998-present)

**Woody International Trust**

Lorne House (1992-1996)

## **APPENDIX 4**

### **Additional Security Capital Loans**

As discussed in the Report section on Bringing Offshore Dollars Back with Pass-Through Loans, Security Capital Ltd. participated in at least ten transactions with Wyly-related parties involving offshore dollars and other financial assets totaling nearly \$140 million. Three of those ten transactions are summarized in the Report text; the remaining seven are summarized here.

**\$10 Million Loan to Green Mountain.** The Subcommittee has been told that the first Security Capital transaction was a \$10 million loan provided on August 26, 1998, by Security Capital to Green Mountain Energy Resources LLC (Green Mountain), a business venture in the United States that the Wyllys had acquired the year before.<sup>1294</sup> The funds for the \$10 million loan were supplied to Security Capital by two Wyly-related IOM corporations, Morehouse and Richland.<sup>1295</sup> The purpose of this loan was to provide additional capital for the Green Mountain venture.<sup>1296</sup> The Subcommittee was told that both loans associated with this transaction were repaid in full a few months later, on November 25, 1998.<sup>1297</sup>

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<sup>1294</sup> See Bickel & Brewer letter and attachments, chart entitled, "Security Capital Loans" (hereinafter "Bickel & Brewer Security Capital Chart"). For more information on the Green Mountain business venture, see the Report section on Investing Offshore Dollars in An Energy Company, above. The term "Green Mountain" is used here to refer to various corporations involved in that venture. The Subcommittee has not been provided with a promissory note related to this loan or any documentation referring to such a note. The Subcommittee did locate a draft \$10 million promissory note to be provided by Queensgate Bank, but the Subcommittee was told that this loan was not finalized and was replaced by the Security Capital loan. See draft promissory note (PSI-WYBR00476-78). The Subcommittee has also been unable to locate documentation substantiating a \$10 million payment by Security Capital to Green Mountain, although other evidence suggests this transfer did take place.

<sup>1295</sup> Bickel & Brewer Security Capital Chart. Bank documentation shows that, on 9/1/98, Richland ordered a wire transfer of \$5.5 million to Security Capital (CC022992); and on 10/22/98, Morehouse ordered a wire transfer of \$4.5 million to Security Capital (CC023454). These wire transfers took place in September and October 1998, after Security Capital had already supposedly provided the \$10 million to Green Mountain in August. The Subcommittee has not been provided with any promissory notes related to these loans, or any documentation referring to such notes.

<sup>1296</sup> Bickel & Brewer Security Capital Chart.

<sup>1297</sup> *Id.* The Subcommittee has been unable to locate documentation establishing that the loans were repaid with cash. Some documentation suggests that Green Mountain instead repaid the loan by issuing \$10 million in Green Mountain stock to Morehouse and Richland, presumably via Security Capital. See, e.g., 11/19/98 email from Ms. Robertson and Mr. French to Aundyr Trust Co. (IOM)(PSI\_ED00070493)("The cash call [for Green Mountain] in total is \$10,000,000. (The protectors are recommending leaving the \$10,000,000 loan to Security Capital outstanding at this time, more on that later.)"); 11/30/98 chart showing transactions involving 12 Wyly-related offshore entities (PSI\_ED00073857-58)(chart indicates Morehouse and Richland were to each get a "Repay from Security Capital" that could be used to buy

**\$1.5 Million Loan to Green Mountain.** The Subcommittee has been told that the second Security Capital transaction took place in October 1998, when Security Capital issued a \$1.5 million loan to Green Mountain, financed by \$1.5 million supplied by a Wyly-related IOM corporation, East Carroll.<sup>1298</sup> The purpose of this loan was apparently to provide additional capital for the Green Mountain venture.<sup>1299</sup> The Subcommittee was told that both loans associated with this transactions were repaid in full on October 22, 1999.<sup>1300</sup>

**\$3 Million Loan to Green Mountain Executive.** The Subcommittee has been told that the next transaction took place in January 1999, when East Carroll issued a \$3 million loan to Security Capital,<sup>1301</sup> and Security Capital issued a \$3 million loan to the chief executive officer of Green Mountain, then David White.<sup>1302</sup> The purpose

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interests in GMP Holdings, a company involved with Green Mountain); 2/2/99 email on "GMP/Security Capital" (PSI\_ED00046780)("Security Capital loan should be cancelled. The two entities now own \$10,000,000 more Green Funding 2, Ltd."); 4/19/99 document entitled, "Summary of investment in Green Funding II L.L.C." (HST\_PSI031913)(listing as one investment "conversion of Security Capital loan [of] 10,000,000"). Green Funding 2, Ltd. and Green Funding II LLC were additional companies involved with Green Mountain.

<sup>1298</sup> Bickel & Brewer Security Capital Chart. The Subcommittee has been unable to locate any promissory notes related to these loans. The Subcommittee has also been unable to locate documentation substantiating a \$1.5 million payment by East Carroll to Security Capital, or a \$1.5 million payment by Security Capital to Green Mountain. Documents were located showing that, on 10/23/98, East Carroll wired \$2.2 million to GMP Holdings, a company related to Green Mountain (CC020008; PSI\_ED00073857-58; PSI-ED00073913-16), but because the date, amount, and payee in these documents do not match the information supplied about the transactions in question, these documents do not directly support the Security Capital loan transactions described in the Bickel & Brewer materials.

<sup>1299</sup> Bickel & Brewer Security Capital Chart.

<sup>1300</sup> *Id.* The Subcommittee has been unable to locate any documentation substantiating repayment of either loan involved in this transaction.

<sup>1301</sup> *Id.* The Subcommittee has been unable to locate any promissory note for an East Carroll loan to Security Capital. The Subcommittee has also been unable to locate evidence substantiating a \$3 million transfer by East Carroll to Security Capital in January 1999. Documentation has been located showing that, on 1/8/99, East Carroll wired \$1.3 million to Security Capital (CC019923-25; Mizuho000465-67); and on 1/20/99, East Carroll wired \$300,000 to Security Capital (CC019922, 33; Mizuho000486-88).

<sup>1302</sup> A series of documents, from January and February 1999, indicate that Security Capital did, in fact, issue a \$3 million loan to David White. See, e.g., 1/7/99 email on "David White loans from Security Capital" (PSI\_ED00043243)(listing \$3 million worth of loans requested by Mr. White); 1/7/99 "Account Control Agreement" (CC037451-56)(establishing a M. David & Jennifer J. White "Pledge Account" at Lehman Brothers to secure any past or future loans from Highland Stargate or Security Capital, signed in part by Highland Stargate on behalf of itself and the holder of the "notes"); 1/8/99 email from Lehman Brothers (PSI00039165)(providing wiring instructions for the pledge account); 1/31/99 Pledge Account statement (CC035951-53)(listing account transactions for January 1999, including a 1/13/99 deposit of \$2.7 million, and a 1/25/99 deposit of \$300,000); undated document entitled "David White Lehman's" (PSI00039164)(listing a series of transactions including a 1/13/99 entry of \$2.7 million for "Loan-Security Capital," and a 1/25/99 entry of \$300,000 for "Loan-Security Capital"). Together, these documents indicate that Security Capital did lend \$3 million to Mr.

of this loan may have been to finance Mr. White's purchase of Green Mountain stock.<sup>1303</sup> Both loans related to this transaction were allegedly repaid in full on October 29, 1999.<sup>1304</sup>

**\$8 Million Loan to Malibu Trust.** The next transaction took place in April 1999, when on April 14, 1999, Security Capital loaned \$8 million to the Sam Wyly Malibu Trust, a U.S. trust created by Mr. Wyly in 1978, to hold certain real estate he had purchased in Malibu, California.<sup>1305</sup> This loan was partly secured by a second mortgage on that real estate.<sup>1306</sup> The funds used to make this loan had been supplied to Security Capital two days earlier, on April 12, 1999, by two Wyly-related IOM corporations, Locke which provided \$3 million, and

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White in January 1999, that one or more promissory notes were prepared and executed, and that Mr. White provided security to repay these amounts by establishing the pledge account at Lehman Brothers.

<sup>1303</sup> Bickel & Brewer Security Capital Chart.

<sup>1304</sup> *Id.* The Subcommittee has been unable to locate documentation substantiating that Security Capital repaid the \$3 million loan to East Carroll. However, a series of October 1999 documents suggest that David White, who had by then left Green Mountain, did repay his outstanding loan to Security Capital by tendering 750,000 shares of Green Mountain stock. It is possible that Security Capital, in turn, tendered these shares to East Carroll. See, e.g., 10/13/99 email from Ms. Robertson to Ms. Boucher (MAV008588) ("David White is no longer with Green Mtn. Evan has been negotiating a settlement of David's employment contract with Highland. The settlement ... is the following: All Security Capital debt forgiven in exchange for 750,000 shares of Green Mountain Energy that has debt of \$1,500,000 attached to it. ... I need to know who funded Security Capital."); 10/14/99 email from Ms. Boucher to Ms. Robertson on "SECURITY CAPITAL" (MAV007724) ("THE LOAN WAS MADE FROM EAST CARROLL LIMITED."); (capitalization in original); 10/18/99 email from Mike Bursell, treasurer of Green Mountain, to Ms. Robertson on "Loan Receipt" (PSI\_ED00043760) ("Received your voice mail this morning. I will give you paydown information as soon as I can get hold of David White loan information."); 10/19/99 email from Mr. Bursell to Ms. Boucher and Ms. Robertson, with copies to others (PSI\_ED00080040) ("The \$4 million dollar cash request should be made up of two payments based on my correspondence with Shari. The first payment of \$1,569,677 represents the paydown of the \$1,500,000 promissory note executed by M. David White and Jennifer J. White with six percent interest charges, (total interest payment of \$69,677), from the effective date of January 11, 1999 to the payment date of October 20, 1999."); bank records (CC020002-03) (showing that, on 10/19/99, East Carroll wired \$1,569,677 to Green Mountain).

<sup>1305</sup> See 4/14/99 Promissory Note between Security Capital and the Sam Wyly Malibu Trust (HST\_PSI089322-26) (providing for an \$8 million, thirty-year loan, with a 6.75 percent interest rate, monthly payments of \$51,887 starting 5/14/99, payable in full by 4/14/29, secured by a deed of trust on the Malibu property; promissory note was signed by Sam Wyly but not Security Capital). See also mortgage amortization schedule (HST\_PSI089333-34); Bickel & Brewer Security Capital Chart; bank documents showing that, on 4/14/99, Security Capital wired \$8 million to the Sam Wyly Malibu Trust (Mizuho007530-33; BA147331). For more information on this transaction, see discussion in Appendix 5.

<sup>1306</sup> See 4/14/99 "Deed of Trust and Assignment of Rents" (PSI00087590-96) (placing second mortgage on Malibu property as security for the \$8 million loan).

Moberly which provided \$5 million.<sup>1307</sup> The purpose of the \$8 million transfer was to provide Sam Wyly with a personal loan.<sup>1308</sup>

Over the next two days, the Sam Wyly Malibu Trust transferred \$5 million of the loan proceeds to one of Sam Wyly's personal bank accounts,<sup>1309</sup> and \$3 million to a securities account opened by the Trust itself.<sup>1310</sup> Unlike the other Security Capital transactions, the promissory note in this case required monthly rather than annual repayments. Over the next two years, monthly payments were made on both the Security Capital-Malibu Trust loan,<sup>1311</sup> and the Security Capital-Locke and Moberly loans.<sup>1312</sup> In February 2002, Mr. Wyly sold the property to a third party.<sup>1313</sup> The Subcommittee was told that, in connection with the sale, on February 13, 2002, both of the loans associated with this transaction were repaid.<sup>1314</sup>

**\$15 Million Loan to Sam Wyly.** Another Security Capital transaction involves a \$15 million loan from Security Capital to Sam

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<sup>1307</sup> Bickel & Brewer Security Capital Chart; bank documents show that, on 4/12/99, Locke wired \$3 million to Security Capital, (CC022578) and Moberly wired \$5 million to Security Capital. (CC023636). The Subcommittee has not, however, located a copy of any promissory notes between Security Capital and Locke or Moberly.

<sup>1308</sup> Bickel & Brewer Security Capital Chart; information provided by Bickel & Brewer.

<sup>1309</sup> On 4/15/99, the day after the loan was issued, the Sam Wyly Malibu Trust wired \$5 million to one of Sam Wyly's personal checking accounts. (BA147334; BA093058-60) Over the course of the month, Mr. Wyly used the funds to make various transfers. (BA093058-60).

<sup>1310</sup> On 4/16/99, the Sam Wyly Malibu Trust wired \$3 million to a securities investment account that it had just opened. (BA147443; PSI00037184). Over the next two years, the Trust used the funds in this account to pay utilities, household expenses, construction costs, and real estate taxes, as well as make monthly payments to Security Capital.

<sup>1311</sup> See, e.g., bank records (Mizuho000250-52; 313-15; 377-79; 921-23; 942-44; 975-77; 1005-07; 1011-13; 1122-24; 1127-29; 633-35; 663-68; 681-83; 1270-72; 717-19; 735-37; 741-43; 15105-09; 15166-70; 1080-82; 15183-92; 15199-203; 15225-29; 15247-51; 15294-98; 15310-15; 15332-36; 15343-47; 15110-14)(showing, from 5/14/99 to 1/14/02, the Sam Wyly Malibu Trust made regular monthly payments to Security Capital of about \$51,887). Altogether, the Sam Wyly Malibu Trust sent Security Capital over \$1 million.

<sup>1312</sup> See, e.g., Irish Trust emails on 11/21/00 (PSI00037246), 5/11/01 (PSI00038919), and 5/22/01 (PSI00038916)(referencing Security Capital Malibu loan involving Locke and Moberly, and monthly loan payments by Security Capital to Locke of about \$18,500 and to Moberly of about \$30,700); bank documents (Mizuho012938-45; 13139-46)(showing Security Capital payments to those corporations on 12/5/01 and 12/14/01).

<sup>1313</sup> Although the Subcommittee was unable to locate the property sale documents, other evidence indicates that the sale took place on 2/13/02, and Sam Wyly sold the Malibu property to a third party for about \$8.1 million. See discussion of this sale in Appendix 5.

<sup>1314</sup> Bickel & Brewer Security Capital Chart. The Subcommittee has not located documentation substantiating the repayment of these loans; however other documentation suggests that repayment was, in fact, made. See, e.g., 2/21/02 financial statement for "Global SW Family" (PSI00110067)(internal Wyly financial report listing outstanding Security Capital loans and indicating the Malibu loan had been repaid).

Wyly on January 30, 2002.<sup>1315</sup> The funds were supplied to Security Capital by Greenbriar, an Isle of Man corporation associated with Sam Wyly.<sup>1316</sup> The purpose of the loan was to enable Sam Wyly to make an additional investment in Ranger Capital, a hedge fund that he founded.<sup>1317</sup> The loan was unsecured, despite the substantial funds involved. In 2003, for an unknown reason, another Wyly-related offshore corporation, Newgale Ltd., was apparently inserted into the lending chain between Greenbriar and Security Capital.<sup>1318</sup> Both loans related to this transaction apparently remain outstanding.<sup>1319</sup>

**\$5 Million Loan to Wrangler Trust.** The next Security Capital transaction was a \$5 million loan in June 2002, from Security Capital to

<sup>1315</sup> See 1/30/02 Promissory Note between Security Capital and Sam Wyly (PSI00027412-15)(providing for a \$15 million, ten-year loan, with a 5.50 percent interest rate, interest payments in 10 annual installments of \$825,000 starting 1/30/03, no payment of principal required until 2/15/12, when the loan was due in full, unsecured; promissory note signed by Sam Wyly and J.D. Hunter as director of Security Capital). See also 1/2/02 fax from David Harris of IFG to Ms. Boucher (PSI00039588)(discussing possible Security Capital loan to Sam Wyly; handwritten notations state: “92 - 94,” “94 loan to Sec Cap,” “Sec Cap to SW”); Bickel & Brewer Security Capital Chart. The Subcommittee has not located bank documentation substantiating a \$15 million transfer from Security Capital to Sam Wyly, although other evidence indicates that this transfer did take place.

<sup>1316</sup> See “draft” promissory note between Greenbriar and Security Capital (CC021671-74)(providing for a \$15 million, ten-year loan with the same terms as above, except the interest rate is 5.25 percent and the annual payments are \$787,500). But see Bickel & Brewer Security Capital Chart which states that the interest rate for this loan was 5.4625 percent. See also emails discussing wire transfer of \$15 million to Security Capital, including 1/29/02 email from Ms. Boucher to Lehman Brothers (CC012691)(providing wire transfer instructions to move funds as follows: “\$15M from Devotion to Sarnia[;] \$15M from Sarnia to Greenbriar[;] \$15M from Greenbriar to Security Capital”); second email from Ms. Boucher to Lehman Brothers later the same day (CC012690)(explaining proposed wire transfers as follows: “– Devotion bought \$15Million of Ranger Fund LLC shares from Sarnia, so the transfer to Sarnia is to pay for those shares. – Sarnia is lending the funds to Greenbriar as an intercompany advance, Greenbriar are related companies – wholly owned by the same Trust. – Greenbriar is making a \$15Million loan to Security Capital”); bank documents showing money transfers on 1/29/02 (BA PSI-W013595; CC027316)(Sarnia transfer of \$15 million to Greenbriar); (CC021725; BA PSI-W013589; CC027039)(Greenbriar transfer of \$15 million to Security Capital); (CC000312; BA PSI-W003526, 011369-70, 72; CC021669) (Greenbriar securities account statement showing 1/29/02 deposit of \$15 million from Sarnia and wire transfer of \$15 million to Security Capital); (Mizuho015692-96)(Security Capital receipt of funds). See also 3/11/02 email (BA007597-98)(providing same explanation of chain of wire transfers).

<sup>1317</sup> Bickel & Brewer Security Capital Chart; 2/21/02 financial statement for “Global SW Family” (PSI00110067)(listing as a loan receivable “Loan - Security Capital (SW-Ranger) \$15,000,000”).

<sup>1318</sup> Bickel & Brewer Security Capital Chart (Newgale “[r]eplaces Greenbriar loan”).

<sup>1319</sup> *Id.* See also documents showing that Sam Wyly made specified annual payments of \$825,000 to Security Capital in 2003, 2004, and 2005, (HST\_PSI005707, 8730)(indicating 2003 transfer of \$825,000); (PSI\_ED00011301-02)(indicating 2004 transfer); (IW002070)(indicating 2005 transfer). The Subcommittee has not located bank documentation showing corresponding payments by Security Capital to Newgale.

the Wrangler Trust, a U.S. trust established by Sam Wyly.<sup>1320</sup> The funds had been supplied to Security Capital on the day before by Locke, an Isle of Man corporation associated with Sam Wyly.<sup>1321</sup> The purpose of the loan was to enable the Trust to buy a famous Norman Rockwell painting called, "Rosie the Riveter."<sup>1322</sup> The painting was pledged as collateral to secure repayment of the loan.<sup>1323</sup> In 2003, for reasons that are unclear, the promissory note was revised about nine months later, without the alterations being disclosed on the document.<sup>1324</sup> Both loans associated with this transaction were apparently repaid on or around April 30, 2004.<sup>1325</sup>

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<sup>1320</sup> See unsigned 6/4/02 Promissory Note between Security Capital and Wrangler Trust (PSI\_ED00013667-70)(providing for a \$5 million, five-year loan, with a 4.75 percent interest rate, interest payments due in 5 annual installments of \$237,500 starting 6/4/03, no payment of principal required until 6/3/07, when repayment of the loan was due in full). See also Bickel & Brewer Security Capital Chart; bank documents (Mizuho001658-61)(showing Security Capital wire transfer of \$5 million to Wrangler Trust); and (PSI00025917, 19; HST\_PSI041867)(Wrangler receipt of wire transfer on 6/4/02).

<sup>1321</sup> The Subcommittee has been unable to locate a copy of a promissory note between Security Capital and Locke, but did locate documentation showing that Locke transferred \$5 million to Security Capital on 6/3/02. See, e.g., bank documentation (BA003936)(showing Locke ordered \$5 million wire transfer to Security Capital on 6/3/02 "to enable the company to acquire a work of art."); and (Mizuho015866-70)(showing Locke wired \$5 million to Security Capital on 6/3/02).

<sup>1322</sup> See, e.g., unsigned promissory note between Security Capital and Wrangler Trust (PSI\_ED00013667-70); bank document showing that, on 6/3/02, Wrangler transferred \$4.9 million to the Elliott-Yearly Gallery to pay for the painting (PSI00025918-19, 68-70); Bickel & Brewer Security Capital Chart.

<sup>1323</sup> See Promissory Note between Security Capital and Wrangler Trust (PSI\_ED00013667) (stating painting is collateral for note and referring to a "Pledge Agreement" effective on the same date, 6/4/02); Bickel & Brewer Security Capital Chart. The Subcommittee was unable to locate a copy of the Pledge Agreement.

<sup>1324</sup> See 3/4/03 email from Ms. Boucher to Ms. Hennington (PSI-WYBR00673)(Ms. Boucher wrote: "Can you fax me what you have executed for CW/SW/Wrangler regarding the \$6M, \$15M, \$5M loans. We don[t] have execution copies. I know there will be a change to some of them (1 or 2)." Ms. Hennington responded: "[T]wo of the ones I have are not signed by Security Capital (one of these is the one we are changing)."; 3/7/03 email from Alan Stroud of Meadows Owens law firm to Ms. Hennington (PSI\_ED00013666)("Attached is the revised Wrangler note. The effective date is still 6/4/02. The qualified obligation language has been removed. I also corrected the amount stated as interest (it formerly said \$250,000, but I changed it to \$237,500)." Ms. Hennington forwarded the Stroud email to Ms. Boucher and Ms. MacInnis on the same date, stating: "I am sending federal express to you today signed originals for the restated Wrang[l]er note ... for execution by Security Capital.").

<sup>1325</sup> See, e.g., Bickel & Brewer Security Capital Chart; bank documentation (PSI00038626-27, 43, 48)(showing, on 5/3/04, Wrangler wired \$5.2 million to Security Capital). See also 1/29/04 email from Ms. Hennington to Ms. Alexander (PSI00038501)(discussing plans to repay loan); April emails calculating interest due on note (PSI\_ED00009470-72; PSI00038649-50)(Ms. Alexander Ms. Hennington, and Ms. MacInnis together appear to determine interest owed on note is \$217,977); internal Wyly financial records for the Wrangler Trust in April and May 2004 showing loan has been repaid (PSI00038624, 31, 46-47, 53, 56). The Subcommittee has not located any documentation substantiating Security Capital's corresponding repayment of the \$5 million obtained from Locke.



**\$6 Million Loan to Charles Wyly.** The final Security Capital transaction described here is a \$6 million loan in October 2002, provided by Security Capital to Charles Wyly.<sup>1326</sup> The funds had been supplied to Security Capital on the same day by Gorsemoor, an Isle of Man corporation owned by the Tyler Trust, which was associated with Charles Wyly and his family.<sup>1327</sup> The apparent purpose of the transaction was to enable Charles to make an additional investment in Ranger Capital, the Wyly-related hedge fund.<sup>1328</sup> The loan was unsecured, despite the substantial funds involved. Both loans associated with this transaction apparently remain outstanding.<sup>1329</sup>

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<sup>1326</sup> See 10/1/02 Promissory Note between Security Capital and Charles Wyly (PSI00027423-26)(providing for a \$6 million, ten-year loan, with a 4.90 percent interest rate, interest payments due in 10 annual installments of \$294,000 starting 10/1/03, no payment of principal until 9/30/12, when repayment of the loan is due in full; promissory note signed by Charles Wyly and J.D. Hunter as director of Security Capital). See also Bickel & Brewer Security Capital Chart; emails discussing transaction (PSI\_ED00013466; PSI\_ED00013492; PSI00027422)(describing notes and anticipated wire transfer on 10/15/02). The Subcommittee did not locate bank documentation showing the actual transfer of \$6 million from Security Capital to Charles Wyly.

<sup>1327</sup> See unsigned Promissory Note between Security Capital and Gorsemoor (PSI\_ED00013467-70)(providing for a \$6 million, ten-year loan with the same terms as the Security Capital-Charles Wyly loan, except the interest rate is 4.525 percent and the annual payments are \$271,500). But see Bickel & Brewer Security Capital Chart (stating interest rate for the Security Capital-Gorsemoor loan is 4.8625 percent). See also emails and correspondence discussing transaction (PSI\_ED00013466, 92; PSI00027422; PSI\_ED00011718); 10/31/02 financial statement for Tyler Trust (PSI00078301)(showing Gorsemoor with a \$6 million Security Capital note as a receivable); 12/31/02 document entitled, "Cash Flow Summary-Domestic" for Charles Wyly (PSI\_ED00063802)(listing cash inflow from Security Capital of \$6 million). The Subcommittee did not locate bank documentation showing the actual transfer of \$6 million from Gorsemoor to Security Capital.

<sup>1328</sup> Bickel & Brewer Security Capital Chart.

<sup>1329</sup> *Id.* See also documents showing that Charles Wyly made the specified annual payment of \$294,000 to Security Capital in 2003 and 2004 (HST\_PSI009336, PSI00038252)(indicating 2003 transfer of \$294,000) and (HST\_PSI011025, 40-41, PSI\_ED000015095-101, and PSI\_ED00008911-12) (showing 2004 transfer).

## **APPENDIX 5**

### **Additional Real Estate Transactions**

As discussed in the Report section on Funneling Offshore Dollars Through Real Estate, during the thirteen years examined in this Report, tens of millions of untaxed, offshore dollars were used to acquire, improve, and operate U.S. real estate properties used by the Wyls for personal residences or business ventures. Five real estate transactions, financed with about \$85 million in offshore dollars, were examined to illustrate the issues involved. Two examples, involving Rosemary's Circle R Ranch and the LL Ranch, appear in the above Report section. The remaining three examples, involving Cottonwood Ventures, Stargate Horse Farm, and oceanside property in Malibu, California, are examined here.

#### **(1) Cottonwood Ventures**

In contrast to Rosemary's Circle R Ranch and the LL Ranch involving residential property, Cottonwood Ventures was a business venture that utilized commercial property in the United States. This property was purchased for about \$8.5 million in 2000, using primarily offshore dollars, and, over the next five years, used another \$5 million in offshore funding to cover 99 percent of its operating and construction costs. These offshore dollars were funneled through both a U.S. management trust and a Nevada corporation. On one occasion in 2003, the property was also used as a vehicle to transmit over \$700,000 in offshore funds to Sam Wyly for his personal use. By early 2005, the offshore funds spent on Cottonwood Ventures exceeded \$13 million.<sup>1330</sup>

Cottonwood Ventures operates out of a set of condominium units on two floors of a commercial office building in downtown Aspen, Colorado. About 1,500 square feet of space was purchased on the first floor to enable Sam Wyly's daughter, Kelly Wyly Elliott, and her business partner, Kristin Yeary, to operate two art galleries. On the second floor, nearly 5,000 square feet of space was purchased to provide offices and an apartment for use by Sam Wyly family members.<sup>1331</sup> The first floor purchase was referred to within Wyly records as Cottonwood Ventures I, while the second floor purchase was referred to as Cottonwood Ventures II. Internal Wyly documents show that, at all

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<sup>1330</sup> See chart entitled, "Cottonwood Ventures Offshore Funding," prepared by the Subcommittee Minority Staff (listing 24 wire transfers from IOM entities that, from 8/10/00 to 12/21/04, transferred over \$13 million into the United States to be spent on this real estate).

<sup>1331</sup> See Pitkin County Assessor/Treasurer online real estate records; 7/13/00 email from Ms. Hennington to Evan Wyly describing property (PSI\_ED00004735).

times, offshore funds were intended to and actually provided 90 percent or more of the funding for Cottonwood Ventures.<sup>1332</sup>

The condominiums used by Cottonwood Ventures are located in a two-story building, known as the Paragon Building, in a prominent business area of Aspen. Ms. Elliott appears to have identified the property as a possible location for the Cottonwood business ventures and played a lead role in negotiating for their purchase.<sup>1333</sup> The IOM trust that would be involved with the real estate appears to have been informed of the purchase after the terms had already been determined and appears to have played no role in the negotiations.<sup>1334</sup> In August 2000, the condominium units were bought by two Colorado LLCs, Cottonwood Ventures I, LLC which became the owner of record for the first floor units, and Cottonwood Ventures II, LLC which became the owner of record for the second floor units.

These two Cottonwood Ventures LLCs were owned by different combinations of U.S. and offshore entities, all of which were ultimately traceable to members of the Sam Wyly family.<sup>1335</sup> Cottonwood Ventures I, LLC, the nominal owner of the first floor units, was jointly owned by two U.S. companies, Wyly Works, Inc., a U.S. corporation wholly owned by Ms. Elliott,<sup>1336</sup> and Cottonwood Gallery, Inc., a Nevada corporation wholly owned by an IOM corporation called Cottonwood I

<sup>1332</sup> See, e.g., 7/13/00 email from Ms. Hennington to Evan Wyly describing property (PSI\_ED00004735) (“We are using a structure very similar to the Two Mile Ranch structure. New grantor trusts will be formed owned by a new foreign corporation and the individuals who will be using the property (1%) each. Of the total cost, 98% will be funded from offshore.”); 12/31/04 financial statement for “Cottonwood Ventures – First Floor” (HST\_PSI007034); 12/31/04 financial statement for Cottonwood II Ltd. (PSI00026597).

<sup>1333</sup> See, e.g., 7/13/00 email from Ms. Hennington to Evan Wyly (PSI\_ED00004735) (describing property and indicating Ms. Elliott was playing a leading role in negotiating its purchase); 4/18/00 email from Ms. Boucher to Ms. Hennington (PSI-WYBR00577); 4/26/00 email from Ms. Boucher to Ms. Hennington and others (PSI-WYBR00578) (indicating Ms. Yeary and Ms. Elliott had agreed to final terms); 5/5/00 email exchange between Ms. Hennington and Ms. Boucher (PSI\_ED00048162) (discussing specific details of the purchase).

<sup>1334</sup> See, e.g., 6/14/00 email from Ms. Boucher to IFG, then trustee of Bessie Trust, on “cottonwood capital” (PSI\_ED00000376-77) (apparently informing IFG of plans for “a future structure necessary for the acquisition of additional colorado real estate”).

<sup>1335</sup> See chart entitled, “Cottonwood Ventures Funding Structure,” prepared by the Subcommittee Minority Staff. Both structures were apparently designed by legal counsel. See, e.g., 4/18/00 email from Ms. Boucher to Ms. Hennington (PSI-WYBR00577) (“I called Rodney, and, with respect to the structure – they are still working on it.”); 4/26/00 email from Ms. Boucher to Ms. Hennington and others (PSI-WYBR00578) (“Rodney advised me this evening that he and Charles Pulman have put together a structure they are comfortable with – we should receive their memo very shortly.”).

<sup>1336</sup> See Colorado Secretary of State online articles of organization for Cottonwood Ventures I, LLC and II LLC (showing Ms. Elliott as the manager of both LLCs); 12/31/03 internal Wyly financial report on Cottonwood Ventures I, LLC (PSI\_ED00056008-09) (“Kelly is the sole shareholder of Wyly Works”).

Ltd.<sup>1337</sup> Cottonwood I Ltd. was, in turn, owned by the 1994 Bessie Trust associated with Sam Wyly.<sup>1338</sup> Using offshore funds, Cottonwood Gallery, Inc., the Nevada corporation, provided most of the funding for the Cottonwood Venture on the first floor, which consisted of the art galleries.<sup>1339</sup>

Cottonwood Ventures II, LLC, the nominal owner of the second floor units, was wholly owned by a U.S. management trust named the Cottonwood Ventures II Management Trust (Cottonwood Management Trust).<sup>1340</sup> The Cottonwood Management Trust had three grantors, Sam Wyly, Kelly Wyly Elliott, and an IOM corporation named Cottonwood II Ltd.<sup>1341</sup> Sam Wyly and Ms. Elliott each assumed a “trust share” of 1 percent, while the IOM corporation assumed a “trust share” of 98 percent. When the Cottonwood Management Trust was first established in 2000, Mr. Wyly and Ms. Elliott each contributed \$60,000, while

<sup>1337</sup> See Nevada Secretary of State online documentation for Cottonwood Gallery, Inc., showing corporation formed on 7/31/00; HST\_PSI007036 (indicating Cottonwood Gallery Inc. is wholly owned by IOM corporation); financial statements showing Cottonwood Gallery Inc. is wholly owned by IOM corporation (PSI\_ED00024967, 74; PSI00044670); emails discussing ownership (PSI\_ED00007683, 4935). Ms. Elliott is president, and Ms. Yeary is secretary-treasurer of the Nevada corporation. Ms. Hennington told the Subcommittee that the IOM corporation used a Nevada corporation here instead of a U.S. management trust, because it was easier for a corporation to run a business like art galleries.

<sup>1338</sup> See, e.g., PSI00040010 (email reporting the corporation incorporated on 7/14/00); PSI\_ED00024963 (undated document showing corporation owned by Bessie Trust). In 2001, Bubba LLC, the Cayman LLC associated with Ms. Elliott, acquired two shares of Cottonwood I Ltd. (IOM), thereby becoming a part owner of the corporation along with the Bessie Trust. See, e.g., 6/30/01, 12/31/01, and 12/31/04 financial statements for Bubba LLC (PSI00039532, PSI00078962, HST\_PSI006916).

<sup>1339</sup> From 2000 to 2002, Cottonwood Gallery, Inc. contributed 92 percent of the assets of the first floor Cottonwood Venture; after 2003, it contributed 88 percent. See, e.g., 1/31/01 financial statement for Cottonwood Gallery Inc. (PSI00043785); 11/30/01 financial statement for “Cottonwood Ventures – First Floor” (PSI00045205) (showing Cottonwood Gallery Inc. had contributed 92 percent of its capital or \$2.79 million, while Wyly Works had contributed 8 percent or \$244,000); 9/30/02 financial statement for “Cottonwood Ventures – First Floor” (PSI00051123); 12/31/03 “Cottonwood Ventures I, LLC Partners Allocations” (PSI\_ED00056008-09); 12/31/04 financial statement for “Cottonwood Ventures – First Floor” (HST\_PSI007034) (showing Cottonwood Gallery Inc. had contributed 88 percent of the capital or \$2.67 million, while Wyly Works had contributed 12 percent or \$374,429).

<sup>1340</sup> See 8/1/00 U.S. trust agreement (BA163416-44). The trustee was Highland Trust Company, a Wyly-related U.S. corporation whose chief financial officer was Ms. Hennington. See also 2002 financial statement for Cottonwood II Ltd. (PSI\_ED00024968) (showing Cottonwood Ventures II, LLC was wholly owned by the U.S. management trust). Apparently a U.S. management trust was used for Cottonwood Ventures II, instead of a Nevada corporation, because Cottonwood Ventures II functioned primarily as a real estate holding company for the second floor offices and apartment, and did not operate an active business.

<sup>1341</sup> See 8/1/00 trust agreement (BA163416-44). Cottonwood II Ltd. was apparently established in July 2000, and initially wholly owned by the Bessie Trust. (PSI00040010; PSI\_ED00024963) In 2001, the six Cayman LLCs associated with Sam Wyly’s six children acquired one share each of Cottonwood II Ltd., apparently becoming part owners of the corporation along with the Bessie Trust. See 2001 financial statements for the Cayman LLCs (PSI00039529-34; PSI00078959-64).

Cottonwood II Ltd. (IOM) contributed \$5,880,000.<sup>1342</sup> This pattern of 1 percent, 1 percent, and 98 percent contributions continued through the following five years. By the end of 2004, for example, internal Wyly documents show that the offshore corporation, Cottonwood II Ltd., had contributed about \$10.4 million, or 98 percent of Cottonwood Management Trust assets.<sup>1343</sup>

This pattern, in which offshore dollars paid for the vast majority of real estate acquisition, construction, and operating costs, matches the pattern in the examples involving Rosemary's Circle R Ranch and the LL Ranch.

Although both Cottonwood corporations in the Isle of Man were owned by the Bessie Trust, the Bessie Trust did not provide the initial funds used to buy the Cottonwood real estate. Instead, the initial funds were supplied by Greenbriar, an IOM corporation owned by the Delhi International Trust, another trust associated with Sam Wyly. Bank documents show that, on August 10, 2000, Greenbriar wired \$2 million to Cottonwood Gallery Inc. and \$5,880,000 to Cottonwood Management Trust.<sup>1344</sup> These U.S. entities, in turn, wired \$2 million to Cottonwood Ventures I, LLC and \$5.8 million to Cottonwood Ventures II, LLC, to buy the first and second floor condominiums.<sup>1345</sup> In addition, Sam Wyly apparently provided \$600,000 in a separate earnest money payment to complete the purchase of this property for about \$8.5 million.<sup>1346</sup>

After purchasing the property, Ms. Elliott and Ms. Yeary oversaw a major renovation of the commercial space. Working with architects and builders, they oversaw construction to provide art galleries on the

<sup>1342</sup> See 8/1/00 U.S. trust agreement (BA163416-44).

<sup>1343</sup> See 12/31/04 financial statement for Cottonwood II Ltd. (PSI00026597). Presumably, by the end of 2004, Mr. Wyly and Ms. Elliott had together contributed about 2 percent of the Trust's assets or \$200,000. See also 1/31/01 financial statement for Cottonwood Management Trust (PSI00043784)(showing Mr. Wyly and Ms. Elliott had each contributed \$59,912 to the Trust, while Cottonwood II Ltd. had contributed \$5,871,363, reflecting their proportional trust shares of 1%, 1%, and 98%); 7/31/01 financial statement for Cottonwood Management Trust (PSI00044669)(showing Mr. Wyly and Ms. Elliott had each contributed \$69,884 to the Trust, while Cottonwood II Ltd. had contributed \$6,868,638).

<sup>1344</sup> See CC021662, 65-67, BA135176, 259 (showing, on 8/10/00, Greenbriar wired \$2 million to Cottonwood Gallery Inc. and \$5,880,000 to Cottonwood Management Trust).

<sup>1345</sup> See BA135176, 150178 (showing, on 8/11/00, Cottonwood Gallery Inc. wired \$1.99 million to Cottonwood Ventures I LLC); BA150178 (showing, on 8/14/00, Cottonwood Ventures I LLC wired \$1.82 million to "Pitkin County Title," presumably for the closing); BA135260, 150108 (showing, on 8/11/00, Cottonwood Management Trust wired \$5.99 million to Cottonwood Ventures II LLC); BA150108 (showing on 8/14/00, Cottonwood Ventures II LLC wired \$5.46 million to "Pitkin County Title," presumably for the closing). See also related emails explaining transactions. (PSI000134658, PSI\_ED00004874, 4898, 4902).

<sup>1346</sup> See, e.g., documents discussing earnest money payment (PSI-WYBR00578, PSI\_ED00004908, PSI00040007, 38739).

first floor, and offices and an apartment on the second floor, spending millions of dollars.<sup>1347</sup> Once the renovations were complete, the U.S. business entities appear to have used the commercial space on a rent-free basis.

From 2000 until 2005, offshore funds were regularly provided to pay for 90 percent or more of the costs associated with Cottonwood Ventures.<sup>1348</sup> Wyly-related offshore entities typically wired sums ranging from \$10,000 to \$1.5 million to the U.S. entities associated with the Cottonwood Ventures. For example, in November 2000, Audubon Assets, a subsidiary of the Bessie Trust, wired \$400,000 to Cottonwood Gallery Inc., which then wired the funds to Cottonwood Ventures I LLC.<sup>1349</sup> In April 2001, Greenbriar, a subsidiary of the Delhi International Trust, wired \$1 million to the IOM corporation, Cottonwood II Ltd., which then wired the funds directly to Cottonwood Ventures II, LLC.<sup>1350</sup> In September 2001, Sarnia Investments, a subsidiary of the Lake Providence International Trust, wired \$1.5 million to the IOM corporation, Cottonwood II Ltd., which then wired the funds directly to Cottonwood Ventures II, LLC.<sup>1351</sup> Internal Wyly records identify another \$2.5 million in “loans” made by Yurta Faf, a Bessie Trust subsidiary, to the IOM corporation, Cottonwood II Ltd.<sup>1352</sup> Cottonwood II Ltd. apparently transferred these offshore funds over time via wire transfers to Cottonwood Management Trust in the United States. Altogether, by the end of 2004, about \$5 million in offshore funds had been sent to the United States to pay for 90 percent or more of

<sup>1347</sup> See, e.g., initial cost projections provided by Ms. Yeary (PSI\_ED00043807-08)(projecting total construction costs of about \$2.4 million); 9/7/00 and 9/8/00 emails between Evan Wyly, Ms. Yeary, Sam Wyly, and others on the remodeling (PSI\_ED00043805, 15).

<sup>1348</sup> See, e.g., 8/14/00 email from Ms. Boucher to Ms. Yeary, with copy to Ms. Hennington and others (PSI00040007)(“[W]e will need cash projections put together to know when funds will be needed and in what amounts. ... I think we will probably make arrangements to advance funds at the beginning of each month, based on your cash flows.”); 9/3/01 email requesting \$1.5 million (PSI\_ED00014220).

<sup>1349</sup> See BA135181 (showing, on 11/20/00, Audubon Assets wired \$400,000 to Cottonwood Gallery Inc., referencing Cottonwood I Ltd. in the wire transfer); BA135181, 150183 (showing, on 11/21/00, Cottonwood Gallery Inc. wired \$400,000 to Cottonwood Ventures I LLC).

<sup>1350</sup> See CC021722, 27046, 273 (showing, on 4/18/01, Greenbriar wired \$1 million to Cottonwood II Ltd.); BA150118 (showing, on 4/19/01, Cottonwood II Ltd. wired \$1 million to Cottonwood Ventures II LLC).

<sup>1351</sup> See CC027321, 4191 (showing, on 9/10/01, Sarnia wired \$1.5 million to Cottonwood II Ltd.); BA150125 (showing, on 9/11/01, Cottonwood II Ltd. wired \$1.5 million to Cottonwood Ventures II LLC).

<sup>1352</sup> See, e.g., 12/31/01 financial statement for Cottonwood II Ltd. (PSI00078967)(listing \$1.2 million Yurta Faf loan); 12/31/04 financial statement for Cottonwood II Ltd. (PSI00026597)(listing \$2.5 million Yurta Faf loan).

the first and second floor renovations, as well as legal, operational, and other costs associated with the Cottonwood Ventures.<sup>1353</sup>

On one occasion in 2003, Cottonwood Ventures was used as a vehicle to transfer \$732,000 in offshore funds to Sam Wyly, apparently to repay the \$600,000 in earnest money used to help buy the property in 2000, plus interest. A 2003 document contains a footnote stating that this \$600,000 “should have been a debit to real estate and credit to notes payable” in 2000, but the “entry was never recorded.”<sup>1354</sup> Nevertheless, in November 2003, several Wyly-related employees engaged in an email exchange which stated, in part, that Sam Wyly was “in need of \$” and identified repayment of the \$600,000 as a possible source of funds for him.<sup>1355</sup> On November 20, 2003, bank records show that Cottonwood I Ltd. (IOM) wired \$183,000 in offshore funds to Cottonwood Gallery Inc., and Cottonwood II Ltd. (IOM) wired \$549,000 to the Cottonwood Management Trust.<sup>1356</sup> Cottonwood Gallery Inc. and the Cottonwood Management Trust then wired the same amounts on the same day to Sam Wyly for his personal use. Internal Wyly documents characterize the \$732,000 in offshore funds paid to Sam Wyly on that date as a repayment of his earlier \$600,000 “loan” plus interest.<sup>1357</sup>

Cottonwood Ventures is an example of U.S. commercial real estate that was bought and paid for primarily with untaxed, offshore dollars. It provided Wyly family members with a rent-free business address for art galleries, office space, and an apartment in downtown Aspen. It also

<sup>1353</sup> See chart entitled, “Cottonwood Ventures Offshore Funding,” prepared by the Subcommittee Minority Staff (listing wire transfers).

<sup>1354</sup> 12/31/03 “Working Trial Balance” for Cottonwood Ventures I LLC (PSI\_ED00055991-99, 56005-13)(“to record earnest money paid by Sam in 2000 for purchase of gallery; should have been a debit to real estate and credit to notes payable; entry was never recorded, but note was paid off in 2003 – WP J.”). The Subcommittee has been unable to locate any loan documentation associated with the \$600,000.

<sup>1355</sup> 11/10/03 email from Ms. Hennington to Ms. Boucher and Ms. MacInnis (PSI\_ED00003443-44)(“Sam is in need of \$ .... We still show a 600,000 receivable from Cottonwood on the start up – maybe we could pay that?”); 11/18/03 email from Keeley to Margot on “cash” (PSI\_ED00003461-62)(“Do you know when the \$600k is going to hit for Sam?”).

<sup>1356</sup> See internal Wyly financial document (PSI00011979)(showing the following wire transfers on 11/20/03:

\$10,000 from Cottonwood Mgmt Trust to Cottonwood Ventures II LLC  
\$549,000 from Cottonwood Mgmt Trust to Sam Wyly  
\$183,000 from Cottonwood Gallery Inc. to Sam Wyly).

See also bank documents showing wire transfers of \$549,000 to the Cottonwood Management Trust (BA135309); \$549,000 to Sam Wyly (BA135309; HST\_PSI009506, 10235; PSI00011979); \$183,000 to Cottonwood Gallery Inc. (BA135236); and \$183,000 to Sam Wyly (BA135236; HST\_PSI009505, 10248; PSI00011979).

<sup>1357</sup> See, e.g., “Sam Wyly Cash Flow Summary Year Ended December 31, 2003” (PSI\_ED00061526-27)(“Payment on Cottonwood Note with Interest 732,000”).

served as a vehicle to provide over \$700,000 in offshore dollars to Sam Wyly for his personal use in 2003. Altogether, more than \$13 million in offshore dollars was spent on this commercial property. That the offshore trustees spent millions of dollars on this property, complied with funding requests within days, exercised no apparent management control over the property, and used funds from multiple trusts associated with Sam Wyly to finance the costs, is additional evidence of the ability of the Wylys to direct the use of the offshore assets.

## **(2) Stargate Horse Farm**

Stargate Horse Farm is another example of U.S. commercial real estate that was acquired primarily with offshore dollars and used offshore funding to cover 90 percent or more of its construction and operating costs. The property was purchased in 2001, from a third party, for about \$2.2 million, using primarily offshore dollars. Over the next four years, more than \$10 million in offshore funds were spent on construction and operating costs. Unlike the other Wyly-related real estate transactions, none of the offshore spending on this property was funneled through a U.S. management trust; instead all offshore funds were directed through a Nevada corporation. By the end of 2004, the total amount of offshore funds spent on the Stargate Horse Farm venture exceeded \$12 million.<sup>1358</sup>

Stargate Horse Farm is a 95-acre property located in a rural area of Denton County, Texas, near the Dallas-Fort Worth metropolitan area.<sup>1359</sup> The property was purchased to enable the daughter of Charles Wyly, Emily Wyly Lopez, to build and operate a state-of-the-art equestrian facility and to import, breed, train, and show internationally competitive sport horses. Mr. Wyly apparently identified the property and sought offshore funding for the business venture.<sup>1360</sup> The Tyler Trust provided

<sup>1358</sup> See chart entitled, "Stargate Horse Farm Offshore Funding," prepared by the Subcommittee Minority Staff (listing 19 wire transfers from IOM entities that, from 1/3/01 to 10/4/04, transferred over \$12 million into the United States to be spent on this real estate).

<sup>1359</sup> See Denton Central Appraisal District online property records. The property was recently put up for sale. Subcommittee interview with Ms. Hennington (4/26/06).

<sup>1360</sup> See, e.g., 10/16/00 memorandum from Ms. Boucher to Ms. Robertson, Mr. French and others (MAV008220-21)("Charles is looking at establishing a breeding and equestrian training facility with Emily's involvement. A business plan has been presented, involving the acquisition of approximately 140 acres of land just north of DFW airport. Only 50 acres will be used for the business venture, and it is likely that the remaining land will be subsequently sold. Keeley and I are consulting Rodney to see if we can use a structure similar to that which was used for the gallery in Aspen, thus utilizing foreign assets for the cash injection and contributing Emily's horses in the same way Kelly contributed the gallery's inventory stocks. ... The anticipated initial commitment will be a minimum of \$3 million."); 9/1/00 communication between Mr. Wyly and Ms. Hennington referencing initial planning for "horse farm" (HST\_PSI030962); 11/6/00 agenda for meeting with Trident, then trustee of the Tyler Trust (PSI\_ED00046460)(listing "Sport Horses Venture" as one of several "[p]lanned CW real estate



\$2.2 million in offshore dollars to purchase the property, despite having little detailed information about the transaction.<sup>1361</sup> Over the next four years, Mr. Wyly and Ms. Lopez oversaw the design, funding, and operation of the horse farm, which made use of millions more in offshore dollars.<sup>1362</sup>

The Stargate horse farm business venture was owned by a combination of U.S. and offshore entities, each of which was ultimately traceable to members of the Charles Wyly family.<sup>1363</sup> Stargate Sport Horses, LP, a Texas limited partnership, actually purchased and became the owner of record for the real estate.<sup>1364</sup> It also operated the equestrian facility on a daily basis. Stargate Sport Horses, LP was, in turn, owned by two partners, Stargate Sport Horses Management LLC, the general partner, and Stargate Horse Properties, Inc., the limited partner.<sup>1365</sup> Both are U.S. corporations. Stargate Sport Horses Management LLC is a Texas limited liability corporation that was wholly owned by Emily Wyly Lopez.<sup>1366</sup> Stargate Horse Properties, Inc. is a Nevada corporation whose president was Emily Wyly Lopez, but which was wholly owned

transactions”).

<sup>1361</sup> See, e.g., 1/26/01 email from Ms. Boucher to Ms. Hennington three weeks after the purchase of the property (PSI\_ED00005215) (“I have very little details on the transaction and structure. What did the IOM company buy when it invested in Stargate Horse Properties Inc. for \$2.5M[?] I assume we’ll eventually get a transaction binder.”).

<sup>1362</sup> See, e.g., 2/28/01 email from Ms. Hennington to Ms. Boucher (PSI\_ED00005370) (stating Mr. Wyly was thinking of using \$3 million in “off-shore cash” on “capital improvements” for the “Sport Horses” property); 5/3/01 email from Ms. Hennington to Ms. Boucher (PSI\_ED00012663) (“We met on Stargate Sport Horses yesterday – this thing is getting out of hand and just growing and growing. We went through all of the budgeted numbers with the builder, etc. and are now estimating total cost at close to \$6.5M (but that could still go up).”); 10/16/01 memoranda from Mr. Wyly requesting additional information from the builder and horse farm managers (HST\_PSI084396-97); 5/3/02 emails discussing horse farm status (PSI\_ED00004864); August 2002 emails discussing property expenditures (PSI\_ED00013262); 9/9/03 email from Ms. Hennington to Mr. Wyly, Ms. Lopez and others forwarding report on the horse farm (HST\_PSI036524); 3/17/05 memorandum by Allan Duncan to Ms. Hennington and others providing information on the horse farm (HST\_PSI036490-94). See also “Premier Dressage Facility” on Stargate Sport Horses website, [www.stargatesporthorses.com](http://www.stargatesporthorses.com) (downloaded 8/11/05) (“Stargate Sport Horses was designed by Emily Lopez for the serious dressage competitor. ... [M]uch thought was put into the health and safety of the horses. The style of this facility is in keeping with the old world tradition of dressage. ... Climate-controlled tack rooms, kitchen and lounge areas, showers, tack lockers and commercial washers and dryers are a few of the amenities.”)

<sup>1363</sup> See chart entitled, “Stargate Horse Farm Funding Structure,” prepared by the Subcommittee Minority Staff.

<sup>1364</sup> See, e.g., 12/19/00 Certificate of Limited Partnership (BA121247); partnership agreement (BA121248-86); Denton Central Appraisal District online property records.

<sup>1365</sup> See partnership agreement (BA121248-86).

<sup>1366</sup> See 12/19/00 articles of organization (BA151451-53); LLC regulations (BA151425-50); Texas Comptroller of Public Accounts online corporation records, BA151450, and PSI\_ED00005215-16 (showing it is a single member LLC whose sole member is Ms. Lopez).

by an IOM corporation called Stargate Farms Ltd.<sup>1367</sup> Stargate Farms Ltd. was wholly owned by the Tyler Trust, the IOM trust associated with Charles Wyly.<sup>1368</sup>

Throughout its existence, the vast majority of the assets of Stargate Sport Horses, LP appears to have come from offshore. Its general partner, Stargate Sport Horses Management LLC, owned by Emily Wyly Lopez, appears never to have provided more than 10 percent of the partnership assets at any time, while its limited partner, Stargate Horse Properties Inc., consistently provided more than 90 percent of the funding, all from offshore. For example, in January 2001, when the partnership began, Stargate Horse Properties Inc. contributed offshore funds to the partnership totaling \$2.5 million, while Stargate Sport Horses Management LLC contributed horses valued at \$240,000.<sup>1369</sup> By the end of 2004, financial reports showed that Stargate Horses Properties Inc. had contributed offshore funds totaling 98 percent of the partnership assets, while “Stargate Sport Horses Management, LLC (Emily)” had contributed less than 2 percent.<sup>1370</sup>

Bank records show that the offshore funds supplied by Stargate Horse Properties Inc. came from three IOM corporations, Stargate Farms Ltd., Elysium Ltd., and Soulicana Ltd.<sup>1371</sup> All three were subsidiaries of the 1994 Tyler Trust associated with Charles Wyly. Bank documents show, for example, that in January 2001, Elysium wired \$2.5 million to Stargate Horse Properties, Inc. which, in turn, wired \$2.49 million to Stargate Sport Horses, LP for the initial purchase of the 95 acres.<sup>1372</sup>

<sup>1367</sup> See 12/19/00 Nevada Corporate Charter (BA121293); articles of incorporation (BA121291-92); corporate bylaws (BA121294-305); Nevada Secretary of State online corporate records; PSI\_ED00005215-16 (showing corporation is wholly owned by Stargate Farms Ltd.).

<sup>1368</sup> See, e.g., PSI00040534, 78301; HST\_PSI006922 (listing Tyler Trust subsidiaries); BA003219, 5029 (wire transfer documentation describing Stargate Farms Ltd. as a “sister company” to other Tyler Trust subsidiaries).

<sup>1369</sup> See BA121248-86, at 86 (partnership agreement).

<sup>1370</sup> See 12/31/04 financial statement for Stargate Sport Horses LP (HST\_PSI007052). See also financial reports showing that, in 2001 and 2002, Stargate Horse Properties Inc. had provided between 91 and 98 percent of the partnership assets (2/28/01 financial statement – 91 percent, PSI00043967; 7/31/01 financial statement – 93 percent, PSI00044683; 11/30/01 financial statement – 96 percent, PSI00045219; 2/28/02 financial statement – 96 percent, PSI00050263; 6/30/02 financial statement – 98 percent, PSI00050698; 8/31/02 financial statement – 98 percent, PSI00050990; 9/30/02 financial statement – 98 percent, PSI00051137).

<sup>1371</sup> See chart entitled, “Stargate Horse Farm Offshore Funding,” prepared by the Subcommittee Minority Staff (listing wire transfers).

<sup>1372</sup> See BA063571 (showing, on 1/3/01, Elysium wired \$2.5 million to Stargate Horse Properties, Inc.); BA063571, 119667 (showing, on 1/4/01, Stargate Horse Properties, Inc. wired \$2,490,000 to Stargate Sport Horses LP); and BA119668 (showing, on 1/5/01, Stargate Sport Horses LP wired \$2,229,987 to Allegiance Title Company, presumably as part of the real estate closing). See also related emails (PSI\_ED00005060-61, 5087, 5216).

There is no record of any mortgage, and no evidence that the horse farm paid rent for the use of the property.

From 2001 until 2005, every few months, Wyly family office personnel requested additional offshore funding to cover expenses associated with the horse farm.<sup>1373</sup> In response, one of the three IOM corporations typically wired from \$100,000 to \$1 million in offshore funds to Stargate Horse Properties Inc. which, in turn, transferred the funds to Stargate Sport Horses, LP. For example, in April 2001, Elysium wired \$750,000 to Stargate Horse Properties Inc. which then transferred the funds to Stargate Sport Horses, LP.<sup>1374</sup> In October 2001, Stargate Farms Ltd. wired \$1 million to Stargate Horse Properties Inc.<sup>1375</sup> In March 2002, Soulieana wired another \$1 million to Stargate Horse Properties Inc.<sup>1376</sup> Four such offshore transfers took place in 2001, six in 2002, five in 2003, and another four in 2004. Altogether, by the end of 2004, \$12.3 million in Wyly-related offshore funds had been wired to Stargate Horse Properties Inc. to buy and develop the property, build the equestrian facility, purchase horses for breeding and showing, and pay for a wide range of operational costs associated with the Stargate Sport Horses venture.

Documents show that key persons involved with this venture expressed concern about its cost almost from inception.<sup>1377</sup> A 2002 report showed that, as of the end of August, the property had cost \$7.4 million to construct, had monthly operating costs of \$68,000, and income over eight months of just \$113,000.<sup>1378</sup> It also showed that \$4.75

<sup>1373</sup> See, e.g., 1/28/02 email requesting \$1 million (PSI\_ED00004559); 3/21/02 email requesting \$1 million (PSI\_ED00004712); 5/3/02 email requesting \$1 million (PSI\_ED00004866); 8/7/02 email requesting \$750,000 (PSI\_ED00013159); 10/31/02 email requesting \$500,000 (PSI\_ED00011166-67); 2/24/03 email requesting \$300,000 (PSI\_ED00013570); 6/20/03 email requesting \$300,000 (PSI\_ED00005830). These requests generally were made by a Wyly family office employee to Ms. Boucher, who communicated the request to Tyler Trust.

<sup>1374</sup> See CC009340, 42, CC020819, BA063559 (showing that, on 4/5/01, Elysium wired \$750,000 to Stargate Horse Properties Inc.); and BA063561, 119675 (showing that, on 5/24/01, Stargate Horse Properties Inc. wired \$750,000 to Stargate Sport Horses LP).

<sup>1375</sup> See BA063567 (showing that, on 10/24/01, Stargate Farms Ltd. wired \$1 million to Stargate Horse Properties Inc.) (wire transfer document referred to funds as a "loan"); and BA063569, 119688 (showing that, on 11/16/01, Stargate Horse Properties Inc. wired \$1 million to Stargate Sport Horses LP).

<sup>1376</sup> See BA005029, 50925, 93545 (showing that, on 3/22/02, Soulieana wired \$1 million to Stargate Horse Properties Inc.); and BA093547, 119591 (showing that, on 4/1/02, Stargate Horse Properties Inc. wired \$1 million to Stargate Sport Horses LP).

<sup>1377</sup> See, e.g., 5/3/01 email from Ms. Hennington to Ms. Boucher (PSI\_ED00012663) ("this thing is getting out of hand and just growing and growing. We ... are now estimating total cost at close to \$6.5M (but that could still go up).").

<sup>1378</sup> "Stargate Sport Horses 2002 Activity" (PSI\_ED00011168).

million in offshore dollars had been contributed to the business venture in the first eight months of 2002. A 2004 cash flow analysis showed that, during the year, the horse farm had incurred costs of \$1.4 million and generated income of only \$1.2 million – and most of that “income” had consisted of offshore funds supplied by Stargate Horse Properties, Inc.<sup>1379</sup> A 2005 memorandum reported that the horse farm was generating \$24,000 per month in income for services costing \$37,000 per month, “suffer[ing] a loss of \$13,000 per month [\$156K loss per year.]”<sup>1380</sup> In short, according to internal Wyly financial documents, Stargate Farms Ltd. and its parent, the Tyler Trust, were spending millions of offshore dollars on a losing business venture.

Stargate Horse Farms is another example of a Wyly-related U.S. business venture that made use of U.S. real estate bought and operated primarily with offshore dollars. In addition to the \$2.2 million purchase price, about \$10.1 million in offshore dollars were used to construct a state-of-the-art equestrian facility and operate it over a four-year period, from 2001 to 2005. The fact that the offshore trustees complied with all funding requests and kept supplying funds despite the venture’s history of losing money provides more evidence of the ability of the Wyllys to direct the use of the offshore assets.

### (3) Malibu Property

The final example involves real estate located in Malibu, California, that was owned by Sam Wyly and pledged as security for an \$8 million loan provided by an offshore entity known as Security Capital. The \$8 million was used to provide Sam Wyly with \$5 million in personal funds, while the remaining funds were used, among other purposes, to pay for a \$2 million renovation of the Malibu property. In 2002, Mr. Wyly sold the Malibu property for \$8.1 million, and the sales proceeds were used to repay the offshore loan in full.

The Malibu property is located within a gated community on the California coastline and has a single residence.<sup>1381</sup> It was apparently purchased by Sam Wyly around 30 years ago from a third party for less than \$500,000.<sup>1382</sup> In 1978, he established The Sam Wyly 1978 Malibu

<sup>1379</sup> 12/31/04 “Stargate Sport Horses, LP Statement of Cash Flows as of December 31, 2004” (HST\_PSI007053).

<sup>1380</sup> 3/17/05 memorandum from Allan Duncan to Ms. Hennington and others on “SSH – Status Report and Recommendations” (HST\_PSI036490-94, at 93).

<sup>1381</sup> The official address for the Malibu house is [REDACTED] Road, Malibu, CA 90265. Wyly documents, however, often refer to it as 36 Malibu [REDACTED].

<sup>1382</sup> See Los Angeles County Recorder’s Office property records. The chain of title shows that Mr. Wyly was the personal owner of the property until it sold. A general warranty deed produced to the Subcommittee indicates that, in 1993, Sam Wyly conveyed the property to

Revocable Trust (Sam Wyly Malibu Trust), a U.S. trust, to manage the property.<sup>1383</sup> Mr. Wyly, however, remained the owner of record for this property until he sold it in late 2001 or early 2002.<sup>1384</sup> It is one of two oceanside properties that Sam Wyly purchased within the same Malibu community.<sup>1385</sup>

Sam Wyly family members made personal use of the Malibu house over the years.<sup>1386</sup> It does not appear to have been rented to any third party. Internal Wyly records show that, unlike the other four properties examined in this Report, the Sam Wyly Malibu Trust obtained “rental income” for the property from Sam Wyly in amounts which varied from \$18,100 per month in 1995, to \$12,100 per month in 2000 and 2001.<sup>1387</sup>

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his partnership, Tallulah Ltd., but this deed was apparently never recorded. (PSI00092624-25) It is possible that, at some point, Tallulah Ltd. distributed this asset back to Mr. Wyly. In any event, Tallulah is not mentioned in the California chain of title or in other documents relating to this property after 1993. The original purchase price for the property is unclear, but appears to have been in the range of \$340,000 to \$485,000. See, e.g., PSI00039355-57, 47549, 92609 (financial statements and related documentation).

<sup>1383</sup> See, e.g., BA061150-54 (appointment of successor trustee to 1978 trust), PSI00087594-96 (Deed of Trust and Assignment of Rents).

<sup>1384</sup> See Los Angeles County Recorder’s Office property records. These records indicate that Mr. Wyly transferred the property to a third party on 12/27/01; however, other documents indicate that this sale actually closed on 2/13/02.

<sup>1385</sup> The official address of the second property is [REDACTED] Road, but it is often referred to in internal Wyly documents as 35 Malibu [REDACTED]. According to Los Angeles County Recorder’s Office records, Sam Wyly apparently transferred this property in 1978 to the Sam Wyly Malibu Trust which, in 1986, transferred it to Sterling Software Inc. Later, the property apparently ended up as a gift to Mr. Wyly’s second wife, Victoria Steele, as part of a divorce settlement. The circumstances under which Sterling Software transferred title to the property and she eventually acquired title to the property are unclear.

<sup>1386</sup> See, e.g., documents indicating that Wyly family members stayed at the house, remodeled and decorated it, and maintained it. (PSI00111934-35, 101302, 102471-72, 79922; PSI\_ED0036419, 62823, 65566, 69996-97; HST\_PSI001433, 36) See also 3/19/01 emails between Ms. Boucher and Ms. Hennington re “Malibu” (PSI\_ED00005464) (Ms. Hennington states that a Wyly family office employee “said Sam had told the kids that the house was theirs, so that may have been why they seemed so surprised” when he indicated, in 2001, that he intended to sell the property).

<sup>1387</sup> See, e.g., 8/31/95 financial statement for Sam Wyly (PSI00105211-15) (showing rental income of \$116,426 for the year to date or \$18,100 per month); 12/31/00 financial statement for Sam Wyly Malibu Trust (PSI00039356-57) (showing rental income of \$145,200 for the year or \$12,100 per month); 2/28/01 financial statement for Sam Wyly Malibu Trust (PSI00039355) (showing rental income of \$24,200 for the year or \$12,100 per month). It is unclear why the rental payments decreased over time. Sam Wyly apparently paid the rental costs. See, e.g., 5/3/99 email from Wyly family office employee (HST\_PSI005494) (“Starting in January 99 Sam had to place money into the Malibu Trust in order to pay the RJW Builders remodeling fees. Monthly Sam places money into the Trust to pay the mortgage +. We have always treated this as rental exp/inc.”); bank records showing monthly payments of \$12,100 from Sam Wyly’s personal account to the Malibu Trust throughout 2000 and 2001 (BA065429, 55 and BA089951-68).

On April 14, 1999, Security Capital issued an \$8 million loan to the Sam Wyly Malibu Trust, secured by a second mortgage on the Malibu property.<sup>1388</sup> The Subcommittee has been told that the purpose of this loan was to provide Mr. Wyly with personal funds.<sup>1389</sup> Security Capital is a shell corporation that was formed in the Cayman Islands in 1998, and began to provide a series of pass-through loans to Wyly-related persons and entities in the United States, using funds supplied by Wyly-related offshore entities.<sup>1390</sup> In the case of the Malibu transaction, Security Capital had obtained the \$8 million used in the loan from two IOM corporations, Locke and Moberly, associated with Sam Wyly.<sup>1391</sup> Security Capital had then, in turn, loaned the \$8 million to the Sam Wyly Malibu Trust.<sup>1392</sup>

On April 15, 1999, the day after the Sam Wyly Malibu Trust received the \$8 million, it transferred \$5 million to Sam Wyly's personal checking account.<sup>1393</sup> Mr. Wyly disbursed the funds over the course of the next month. On April 16, 1999, the Sam Wyly Malibu Trust transferred the remaining \$3 million in offshore funds to a securities investment account it had just opened.<sup>1394</sup> Over the course of the next few years, the Sam Wyly Malibu Trust gradually drew down the offshore funds in its investment account to pay for construction projects, real estate taxes, utilities, and other expenses associated with the

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<sup>1388</sup> See 4/14/99 Promissory Note (HST\_PSI089322-26); mortgage amortization schedule (HST\_PSI089333-34); 4/14/99 Deed of Trust and Assignment of Rents (PSI00087590-96)(placing second mortgage on Malibu property as security for \$8 million loan). The "loan" was issued to the Sam Wyly Malibu Trust and secured by the Malibu property, even though the Trust never owned the property; Sam Wyly owned it.

<sup>1389</sup> Discussions with Wyly legal counsel. See also 1/26/06 letter and attachments from Wyly legal counsel, Bickel & Brewer, responding to Subcommittee questions about Security Capital, chart entitled, "Security Capital Loans" describing the "purpose" of each "loan" (stating purpose of Malibu transaction was to provide a "Sam Wyly Loan")(hereinafter "Bickel & Brewer Security Capital Chart").

<sup>1390</sup> For more information about Security Capital, see Report section on Bringing Offshore Dollars Back with Pass-Through Loans, above.

<sup>1391</sup> See, e.g., CC022578, 23636 (showing, on 4/12/99, Locke wired \$3 million and Moberly wired \$5 million to Security Capital).

<sup>1392</sup> See, e.g., April 1999 bank statements (Mizuho007530-33; BA147331)(showing, on 4/14/99, Security Capital wired \$8 million to the Sam Wyly Malibu Trust). At the time of the \$8 million loan, the Malibu property had an appraised value of only \$7.2 million and was already encumbered by a \$1.2 million mortgage. For that reason, the Malibu property was worth about \$6 million and could not fully secure the \$8 million loan. This \$2 million deficiency suggests the 1999 transaction was a less than arm's-length transaction.

<sup>1393</sup> See BA147334, 93058-60 (showing that, on 4/15/99, Malibu Trust wired \$5 million to one of Sam Wyly's personal checking accounts); BA093059-60 (showing, on 4/27, Sam Wyly wrote a check for \$4.2 million from this checking account, wrote additional checks from 4/15 to 4/30, and wired \$1.1 million to another account on 5/6/99).

<sup>1394</sup> See BA147443; PSI00037184.

property until it was sold in 2002.<sup>1395</sup> In addition to paying construction and operating costs, the Sam Wyly Malibu Trust used the offshore funds in its investment account to make routine “loan” payments to Security Capital. Each month, from May 1999 to January 2002, the Malibu Trust wire transferred \$51,877 offshore to Security Capital, for a total of about \$1 million.<sup>1396</sup>

In 2001, Sam Wyly decided to sell the Malibu property. Ms. Hennington and Ms. Boucher warned him that unless he sold it for at least \$10 million, he would owe money from the transaction, because he would have to repay the first and second mortgages on the property as well as significant real estate taxes.<sup>1397</sup> In September 2001, Mr. Wyly apparently signed papers agreeing to sell the house and its furnishings to a third party for \$8.1 million. Ms. Boucher described the \$8.1 million as “a good price,” but noted “the shortfall from taxes will be tough to cover.”<sup>1398</sup> The Malibu sale apparently closed on February 13, 2002, which is also the date when the Sam Wyly Malibu Trust supposedly paid Security Capital \$7.8 million to satisfy the outstanding loan.<sup>1399</sup>

<sup>1395</sup> See, e.g., PSI00037184, PSI00037211-45, 38917-29 (showing gradual withdrawals from the Trust’s security account, each of which matched deposits into the Trust’s checking accounts). See also 3/20/01 memo from Ms. Hennington and Ms. Boucher to Sam Wyly (PSI\_ED00005492-93)(stating the Malibu property cost about \$1 million per year in “mortgage payments, taxes, insurance and upkeep”). One Wyly family office employee raised questions about how to treat the offshore funds in the family’s internal financial records. An email asked whether the offshore funds used to pay for renovation costs should be treated as “rental income” or “loans.” 5/3/99 email from Ms. Alexander to Elaine Spang (HST\_PSI005494). See also 4/14/99 email between them (HST\_PSI089321). Handwritten notations on this email state in part: “Security Capital – unrelated lender – [illegible] step transaction doctrine ... foreign co.’s owned by Trustees’ Wyly family trusts.” The “step transaction doctrine” is a tax doctrine used by U.S. courts to analyze whether a transaction should be treated as a sham for tax purposes. It appears that at least one Wyly family office employee wondered whether this doctrine might be applied to the offshore funds used to pay the Malibu property’s construction and operating costs.

<sup>1396</sup> See, e.g., bank documents showing that, from 5/14/99 to 1/14/02, the Sam Wyly Malibu Trust made regular monthly payments of \$51,877 via wire transfers to Security Capital. (Mizuho000250-52; 313-15; 377-79; 921-23; 942-44; 975-77; 1005-07; 1011-13; 1122-24; 1127-29; 633-35; 663-68; 681-83; 1270-72; 717-19; 735-37; 741-43; 15105-09; 15166-70; 1080-82; 15183-92; 15199-203; 15225-29; 15247-51; 15294-98; 15310-15; 15332-36; 15343-47; 15110-14). See also mortgage amortization schedule (HST\_PSI089333-34)(specifying \$51,877 payments). Security Capital presumably made similar “loan” repayments to Locke and Moberly.

<sup>1397</sup> See, e.g., 3/20/01 memo from Ms. Hennington and Ms. Boucher to Sam Wyly (PSI\_ED00005492-93); PSI\_ED00005464, 5856 (related emails).

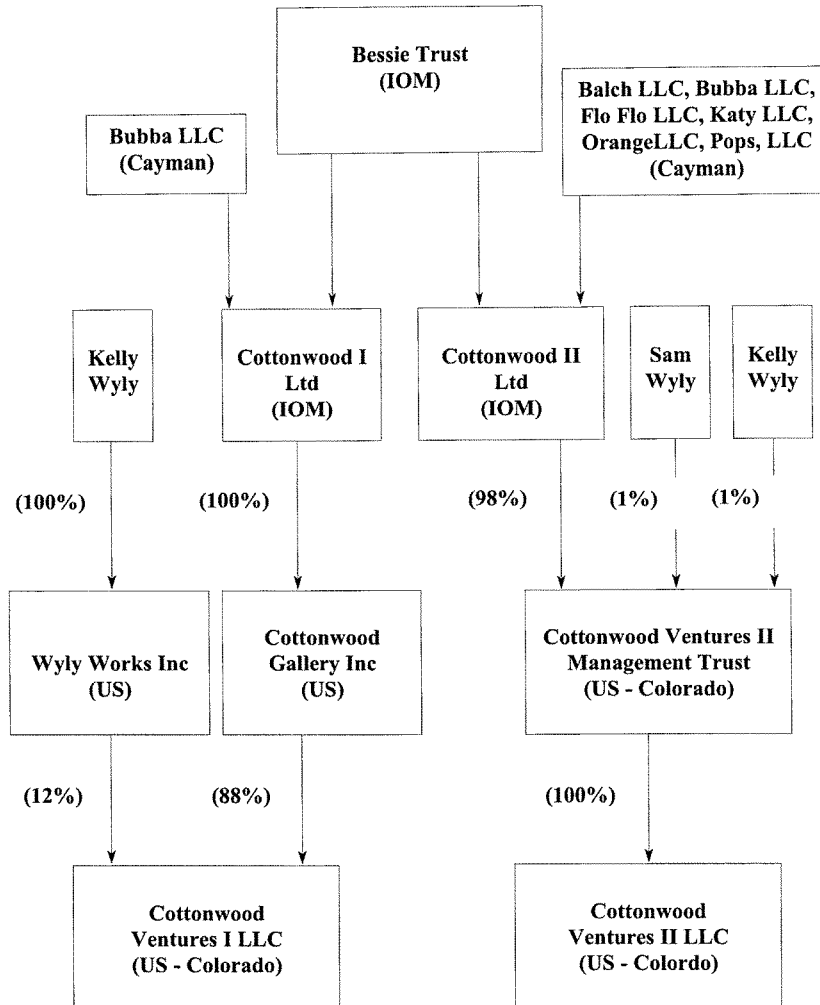
<sup>1398</sup> 9/11/01 email (PSI\_ED00014240). In January 2002, Ms. Hennington and Ms. Boucher met personally with Sam and Evan Wyly about funding issues related to the Malibu property. 1/15/02 emails (PSI\_ED00009008, 9018-19).

<sup>1399</sup> See, e.g., Bickel & Brewer Security Capital Chart (identifying repayment date); 2/5/02 email identifying repayment date (PSI\_ED00009191-92); undated document entitled, “SW Family Offshore Cash Flow Analysis” (PSI\_ED00014305) (showing, under “Offshore known cash inflows”: “Malibu loans repaid 7,800,000”). But see undated document entitled, “SW Family Domestic Cash Flow Analysis” (PSI\_ED00014307)(showing, under “Domestic known cash outflows”: “Malibu payoff 2,286,000”).

The Malibu property is an example of U.S. real estate that was pledged as security for a loan from a Cayman shell corporation, Security Capital, that sent millions of untaxed, offshore dollars into the United States for Sam Wyly's personal use. The loan also paid for the Malibu property's renovation and operating costs for more than two years. In 2002, when the property was sold to a third party, Mr. Wyly sent over \$7 million back offshore as repayment of the Security Capital loan. The fact that Sam Wyly was able to obtain an \$8 million loan on real estate already encumbered by another loan, and was able to use the bulk of this cash for his personal use, is further evidence of Wyly ability to direct the use of the offshore assets.



### Cottonwood Ventures Funding Structure



## Cottonwood Ventures Offshore Funding

Date	By Order Of	Amount	To	Date	Amount	To
8/10/2000	Greenbriar, Ltd	\$2,000,000	Cottonwood Gallery, Inc	8/11/2000	\$1,990,000	Cottonwood Ventures I, LLC
11/20/2000	Audubon Asset, Ltd	\$400,000	Cottonwood Gallery, Inc	11/21/2000	\$400,000	Cottonwood Ventures I, LLC
1/16/2001	Cottonwood I, Ltd	\$300,000	Cottonwood Gallery, Inc	1/16/2001	\$300,000	Cottonwood Ventures I, LLC
2/16/2001	Cottonwood I, Ltd	\$40,000	Cottonwood Gallery, Inc	2/20/2001	\$40,000	Cottonwood Ventures I, LLC
3/14/2001	Cottonwood I, Ltd	\$75,000	Cottonwood Gallery, Inc	3/19/2001	\$75,000	Cottonwood Ventures I, LLC
11/20/2003	Cottonwood I, Ltd	\$183,000	Cottonwood Gallery, Inc	11/20/2003	\$183,000	Sam Wyly Cottonwood Ventures I, LLC
12/23/2003	Cottonwood I, Ltd	\$50,000	Cottonwood Gallery, Inc	1/29/2004	\$50,000	Cottonwood Ventures I, LLC
<b>Cottonwood I Total</b>		<b>\$3,048,000</b>			<b>\$3,038,000</b>	
8/10/2000	Greenbriar, Ltd	\$5,880,000	Cottonwood Management Trust	8/11/2000	\$5,990,000	Cottonwood Ventures II, LLC
4/18/2001	Greenbriar, Ltd	\$1,000,000	Cottonwood II, Ltd	4/19/2001	\$1,000,000	Cottonwood Ventures II, LLC
9/10/2001	Samia Investments, Ltd	\$1,500,000	Cottonwood II, Ltd	9/11/2001	\$1,500,000	Cottonwood Ventures II, LLC
9/14/2001	Cottonwood Ventures II, LLC	\$1,500,000	Cottonwood Management Trust	9/14/2001	\$350,000	Cottonwood Ventures II, LLC
			Cottonwood Management Trust	10/25/2001	\$100,000	Cottonwood Ventures II, LLC
			Cottonwood Management Trust	11/20/2001	\$450,000	Cottonwood Ventures II, LLC

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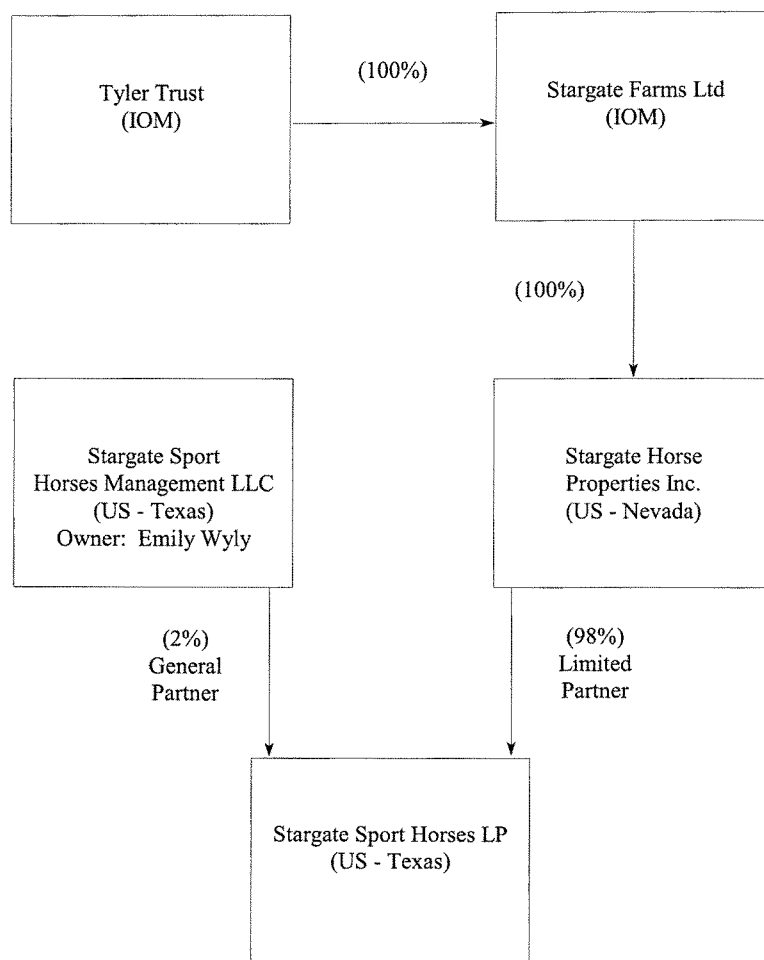
## Cottonwood Ventures Offshore Funding

Date	By Order Of	Amount	To	Date	Amount	To
4/12/2002	Cottonwood II, Ltd	\$50,000	Cottonwood Management Trust	12/28/2001	\$550,000	Cottonwood Ventures II, LLC
4/24/2002	Cottonwood II, Ltd	\$200,000	Cottonwood Management Trust	1/25/2002	\$500,000	Cottonwood Ventures II, LLC
5/8/2002	Cottonwood II, Ltd	\$200,000	Cottonwood Management Trust	3/18/2002	\$120,000	Cottonwood Ventures II, LLC
8/2/2002	Cottonwood II, Ltd	\$20,000	Cottonwood Management Trust	4/19/2002	\$50,000	Cottonwood Ventures II, LLC
8/27/2002	Cottonwood II, Ltd	\$200,000	Cottonwood Management Trust	4/29/2002	\$200,000	Cottonwood Ventures II, LLC
11/20/2002	Cottonwood II, Ltd	\$300,000	Cottonwood Management Trust	5/21/2002	\$200,000	Cottonwood Ventures II, LLC
10/8/2003	Cottonwood II, Ltd	\$20,000	Cottonwood Management Trust	8/2/2002	\$20,000	Cottonwood Ventures II, LLC
11/20/2003	Cottonwood II, Ltd	\$549,000	Cottonwood Management Trust	9/3/2002	\$100,000	Cottonwood Ventures II, LLC
12/19/2003	Cottonwood II, Ltd	\$50,000	Cottonwood Management Trust	10/8/2003	\$20,000	Cottonwood Ventures II, LLC
3/8/2004	Cottonwood II, Ltd	\$50,000	Cottonwood Management Trust	11/20/2003	\$10,000	Cottonwood Ventures II, LLC
3/24/2004	Cottonwood II, Ltd	\$100,000	Cottonwood Management Trust	11/20/2003	\$549,000	Sam Wyly
				12/23/2003	\$50,000	Cottonwood Ventures II, LLC
				3/8/2004	\$50,000	Cottonwood Ventures II, LLC
				3/25/2004	\$50,000	Cottonwood Ventures II, LLC

Prepared by Permanent Subcommittee on Investigations Staff

## Cottonwood Ventures Offshore Funding

Date	By Order Of	Amount	To	Date	Amount	To
			Cottonwood Management Trust	4/20/2004	\$30,000	Cottonwood Ventures II, LLC
			Cottonwood Management Trust	6/17/2004	\$20,000	Cottonwood Ventures II, LLC
			Cottonwood Management Trust	7/2/2004	\$10,000	Cottonwood Ventures II, LLC
7/7/2004	Cottonwood II, Ltd	\$50,000	Cottonwood Management Trust	7/15/2004	\$25,000	Cottonwood Ventures II, LLC
			Cottonwood Management Trust	12/15/2004	\$16,000	Cottonwood Ventures II, LLC
12/21/2004	Cottonwood II, Ltd	\$50,000	Cottonwood Management Trust	12/21/2004	\$20,000	Cottonwood Ventures II, LLC
			Cottonwood Management Trust	3/2/2005	\$20,000	Cottonwood Ventures II, LLC
			Cottonwood Management Trust	4/12/2005	\$20,000	Cottonwood Ventures II, LLC
			Cottonwood Management Trust	4/19/2005	\$20,000	Cottonwood Ventures II, LLC
			Cottonwood Management Trust	5/9/2005	\$30,000	Cottonwood Ventures II, LLC
Cottonwood II Total		\$10,219,000			\$10,570,000	
Cottonwood Total		\$13,267,000			\$13,608,000	

**Stargate Horse Farm Funding Structure**

## Stargate Horse Farm Offshore Funding

Date	By Order Of	Amount	To	Date	Amount	To
1/3/2001	Elysium Ltd.	\$2,500,000	Stargate Horse Properties Inc.	1/4/2001	\$2,450,000	Stargate Sport Horses LP
4/5/2001	Elysium Ltd.	\$750,000	Stargate Horse Properties Inc.	5/24/2001	\$750,000	Stargate Sport Horses LP
8/20/2001	Stargate Farms Ltd.	\$700,000	Stargate Horse Properties Inc.	8/28/2001	\$700,000	Stargate Sport Horses LP
10/24/2001	Stargate Farms Ltd.	\$1,000,000	Stargate Horse Properties Inc.	11/16/2001	\$1,000,000	Stargate Sport Horses LP
<b>2001 TOTAL</b>		<b>\$4,950,000</b>			<b>\$4,940,000</b>	
1/30/2002	Souleana/Stargate Farms Limited	\$1,000,000	Stargate Horse Properties Inc.	2/1/2002	\$1,000,000	Stargate Sport Horses LP
3/22/2002	Souleana/Stargate Farms Limited	\$1,000,000	Stargate Horse Properties Inc.	4/1/2002	\$1,000,000	Stargate Sport Horses LP
5/8/2002	Elysium/Stargate Farms Limited	\$1,000,000	Stargate Horse Properties Inc.	5/14/2002	\$1,000,000	Stargate Sport Horses LP
5/23/2002	Elysium/Stargate Farms Limited	\$1,000,000	Stargate Horse Properties Inc.	6/18/2002	\$1,000,000	Stargate Sport Horses LP
8/9/2002	Elysium/Stargate Farms Limited	\$750,000	Stargate Horse Properties Inc.	8/19/2002	\$750,000	Stargate Sport Horses LP
11/15/2002	Souleana/Stargate Farms Limited	\$500,000	Stargate Horse Properties Inc.	11/21/2002	\$500,000	Stargate Sport Horses LP
<b>2002 TOTAL</b>		<b>\$5,250,000</b>			<b>\$5,250,000</b>	

Prepared by Permanent Subcommittee on Investigations Staff

## Stargate Horse Farm Offshore Funding

3/9/2003	Souleiana/Stargate Farms Limited	\$300,000	Stargate Horse Properties Inc.	3/12/2003	\$300,000	Stargate Sport Horses LP
5/27/2003	Souleiana/Stargate Farms Limited	\$100,000	Stargate Horse Properties Inc.	6/5/2003	\$100,000	Stargate Sport Horses LP
6/27/2003	Souleiana/Stargate Farms Limited	\$300,000	Stargate Horse Properties Inc.	7/1/2003	\$300,000	Stargate Sport Horses LP
10/1/2003	Souleiana/Stargate Farms Limited	\$100,000	Stargate Horse Properties Inc.	10/1/2003	\$100,000	Stargate Sport Horses LP
11/13/2003	Souleiana/Stargate Farms Limited	\$300,000	Stargate Horse Properties Inc.	11/21/2003	\$300,000	Stargate Sport Horses LP
<b>2003 TOTAL</b>		<b>\$1,100,000</b>			<b>\$1,100,000</b>	
3/10/2004	Souleiana/Stargate Farms Limited	\$250,000	Stargate Horse Properties Inc.	3/12/2004	\$250,000	Stargate Sport Horses LP
4/6/2004	Souleiana/Stargate Farms Limited	\$250,000	Stargate Horse Properties Inc.	4/13/2004	\$250,000	Stargate Sport Horses LP
6/24/2004	Souleiana/Stargate Farms Limited	\$250,000	Stargate Horse Properties Inc.	7/1/2004	\$200,000	Stargate Sport Horses LP
				9/14/2004	\$50,000	Stargate Sport Horses LP
10/4/2004	Souleiana/Stargate Farms Limited	\$250,000	Stargate Horse Properties Inc.	10/6/2004	\$200,000	Stargate Sport Horses LP
<b>2004 TOTAL</b>		<b>\$1,000,000</b>			<b>\$950,000</b>	
<b>GRAND TOTAL</b>		<b>\$12,300,000</b>			<b>\$12,240,000</b>	

## IX. LAW FIRMS AND TAX HAVEN ABUSES

The evidence reviewed by the Subcommittee shows that a battery of law firms was integral to the design and implementation of the tax and offshore structures discussed in this Report. These structures – and the activities and transactions used to implement them – could not have occurred without the vast array of legal counsel employed by the Wyllys as well as the promoters and individuals involved in the POINT transactions. In the case of the Wyllys, there was heavy involvement on the part of, and reliance by the Wyllys on, legal counsel in every facet of the offshore structure, from its design and operation, to the structuring of transactions, to the provision of legal opinions. In the case of the POINT transactions, a law firm collaborated with Quellos on the design of the tax strategy, the structure of the transaction, the creation of entities involved in the transaction, and the issuance of legal opinions that indicated the strategy was more likely than not to be valid under the tax code. Without a legal opinion, the promoter would not have been able to sell such an aggressive strategy to sophisticated clients.

The Subcommittee's access to documentary evidence from the law firms was limited, and representatives of the law firms were constrained with respect to some of the matters they could discuss, because much of the material was subject to claims of attorney-client privilege. It was therefore difficult to determine in many instances all of the facts the law firms used in formulating their opinions and advice, and precisely what advice the law firms actually provided to their clients. Nonetheless, the Subcommittee was able to obtain sufficient evidence to document the critical role played by law firms and to show that the activities and transactions reported in previous sections took place with heavy involvement of and reliance on legal counsel.

**Wyly Legal Counsel.** U.S. legal counsel played key roles in the development and implementation of the Wyllys' offshore structure, from moving assets offshore, to designing mechanisms through which these assets could be leveraged, to structuring transactions, to providing legal opinions and advice on how to operate the offshore entities with respect to U.S. tax and securities law.<sup>1400</sup> Wyly representatives told the Subcommittee that U.S. legal counsel was routinely consulted about transactions relating to the offshore structure. The evidence reviewed by the Subcommittee supports that assertion, indicating that U.S. lawyers helped identify and negotiate with offshore service providers to establish and manage the Wyly-related offshore entities, devised ways to move

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<sup>1400</sup> Written presentation to the Subcommittee by Wyly legal counsel describing the role of legal counsel in these matters (5/15/06).



Wyly assets offshore – and then transfer them back to the United States – and drafted the paperwork necessary to implement these transactions.

According to Wyly representatives interviewed by the Subcommittee, the ideas for the Wyllys' offshore structure took shape in 1991, at an offshore planning seminar – attended by Sharyl Robertson – given by David Tedder, of the California law firm Pratter, Tedder & Graves. According to a document referencing Ms. Robertson's notes and a workbook handed out at the seminar, "the foundation behind any transaction should be estate planning," some of the goals of which are to eliminate inheritance tax and reduce income tax whenever possible.<sup>1401</sup> After the seminar, the Wyllys apparently worked with Mr. Tedder, who, along with another California lawyer, Michael Chatzky, helped the Wyllys establish the offshore trusts and corporations.<sup>1402</sup>

The transfer of the Wyllys' stock options and warrants to Nevada corporations in exchange for private annuity policies, which were then assumed by foreign corporations, was the first step in sending the Wyllys' assets offshore. In April 1992, the Wyllys and ten related Nevada corporations, formed and directed by Ms. Robertson, received opinions from Pratter, Tedder, & Graves, with apparent help from Mr. Chatzky. These opinions concerned federal income tax treatment relating to the acquisition by the Nevada corporations of Michaels Stores and Sterling Software options and warrants in exchange for the issuance of private annuities to the Wyllys, as well as the subsequent assumption by foreign corporations of the obligation to make the annuity payments. The firm concluded and advised the Wyllys and the corporations that these exchanges and assumptions of obligations would not be taxable events in 1992 and that the subsequent exercise of the securities by the obligators would likely not generate a taxable event to the annuitants.<sup>1403</sup> However, the opinion letters appear to have relied on an incomplete set of facts that did not truly represent the situation. For example, the opinions did not consider whether the stock option transfers were between related parties. Under Section 83 of the tax code, a stock option transfer between related parties would have required stock option exercise gains to be attributed to the original option holder.

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<sup>1401</sup> 6/12/91 notes from a seminar attended by Ms. Robertson and the workbook handed out at the seminar (PSI\_ED00042362-97).

<sup>1402</sup> 4/10/92 letter from Mr. Chatzky to Mr. Tedder and Michael French (PSI-WYBR00270). Subcommittee interviews of Ms. Robertson (3/9/06) and Mr. French (4/21/06).

<sup>1403</sup> See, e.g., 2/28/92 letter from Pratter, Tedder, & Graves to Sam Wyly (PSI-WYBR00219-241); 2/28/92 letter from Pratter, Tedder, & Graves to Charles Wyly (PSI-WYBR246-268); and 4/2/92 letter from Pratter, Tedder, & Graves to Roaring Creek Limited (Nevada) (PSI-WYBR00125-141).

Also in 1992, Jackson & Walker, a Texas law firm, provided legal services relating to the transfer of stock options and warrants to several of the Wyly-related offshore corporations, confirming for Michaels Stores that the IOM corporations were “the lawful owners of the options and warrants ... and that Lorne House Trust Limited has full power and authority to provide notice of exercise.”<sup>1404</sup> Jackson & Walker also provided Lorne House with information on SEC filing requirements for the Bulldog Non-Grantor Trust and the Pitkin Non-Grantor Trust relating to their holdings of securities of Sterling Software and Michaels Stores.<sup>1405</sup> In addition, Sharyl Robertson indicated in a letter to Lorne House that Jackson & Walker could provide Lorne House with an opinion in 1992 stating that securities held by several Wyly-related offshore corporations were not subject to any SEC Rule 144 volume limitations and that the securities in no way needed to be aggregated with securities held by the settlors of the trusts, who were Sam and Charles Wyly.<sup>1406</sup> An opinion was apparently never provided, but the Wyly-related offshore entities continued to represent themselves as not subject to SEC reporting and resale requirements that prevent issuing corporations and their affiliates from transferring company shares through private transactions not open to the investing public and then reselling those securities on public exchanges.

Additional evidence suggests that Charles Lubar, of the London office of Morgan, Lewis & Bockius, a Philadelphia-based law firm, was also involved in the original formation of the trusts. In a 2001 email, for example, Michelle Boucher explained to Keeley Hennington that Mr. Lubar “is a partner at Morgan, Lewis, and Bockius in London ... and has been involved with the original structuring of the trusts.”<sup>1407</sup> In 1994, Mr. Lubar provided a memorandum to Michael French on the creation of an Isle of Man trust using a non-U.S. grantor and “the U.S. federal income tax treatment of U.S. citizen beneficiaries” of such a trust.<sup>1408</sup> Under U.S. tax law for trusts at that time, very favorable tax treatment was afforded to foreign grantor trusts, and that opinion served as the basis for the creation of four foreign grantor trusts benefitting the Wyly family. However, the legal opinion was based on several facts that did not truly represent the complete situation, such as the representation that the foreign grantors would exercise control of the trust assets, when, in fact, the trust assets were under the direction of the Wylys and their

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<sup>1404</sup> 5/7/92 letter from Jackson & Walker to Michaels Stores (PSI-WYBR00274-76).

<sup>1405</sup> See, e.g., 4/22/92 memorandum from Jackson & Walker to Lorne House Trust Limited/Ronnie Buchanan (PSI-WYBR00271-72).

<sup>1406</sup> 4/27/92 letter from Ms. Robertson to Lorne House Trust Limited (PSI00126713).

<sup>1407</sup> 9/5/01 email from Ms. Boucher to Ms. Hennington (PSI\_ED00014217).

<sup>1408</sup> 2/15/94 memorandum from Mr. Lubar to Mr. French (PSI00117520-24).

representatives. Morgan Lewis billing records indicate that Morgan Lewis provided “professional services ... in connection with analysis of foreign trust for US tax purposes and private annuity transactions arising therefrom” to Sam and Charles Wyly as late as 2003.<sup>1409</sup>

After having been involved in providing the legal opinions for the original formation and asset transfers in 1992, Michael Chatzky helped expand the Wyllys’ offshore structure in 1996, again providing the Wyllys with legal opinions stating that the transfer of stock options to a foreign corporation in exchange for an annuity was not a taxable event. The opinions also concluded that once the foreign corporations exercised the options, it was not likely a taxable event for the person who originally held the options.<sup>1410</sup> These opinions had the same key omissions as the 1992 opinions that provided the basis for the stock option transfers to the Nevada corporations. Again, they failed to analyze whether the transactions were stock option transfers between related parties under Section 83. Mr. Chatzky provided additional opinions for the Wyllys in November 1996, this time concerning stock option-annuity swaps in light of a 1996 change in U.S. tax law imposing additional taxes on transfers to foreign trusts, including offshore trusts “dominated” by a U.S. settlor or beneficiary.<sup>1411</sup> Again, Mr. Chatzky concluded that the 1996 transactions were non-taxable events.

Also in 1996, the Dallas office of Jones, Day, Reavis & Pogue started to become very active in Wyly-related offshore activities and transactions, specifically with respect to the pursuit of domestic business ventures financed by the Wyly-related offshore entities. For example, the firm played an active role in carrying out the March and December 1996 private placement of Michaels Stores options and shares sold to some of the offshore corporations.<sup>1412</sup> Jones Day also filed SEC Schedule 13Ds for Sam and Charles Wyly, including one, filed January 5, 1996, in which the Wyllys expressly disclaimed ownership of Sterling

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<sup>1409</sup> See, e.g., 9/30/03 invoice from Morgan Lewis to Charles Wyly (PSI00038348) and 5/16/03 invoice from Morgan Lewis to Sam Wyly (PSI00038355).

<sup>1410</sup> See, e.g., 2/22/96 memo from Mr. Chatzky to The Tallulah International Trust discussing Sam Wyly Michaels Stores stock option exchange (PSI00131205-24); 3/7/96 memo from Mr. Chatzky to the Woody International Trust discussing Charles Wyly Sterling Software stock option exchange (PSI00132210-31); and 2/18/96 fax from Ms. Boucher to Mr. Buchanan describing the transaction and indicating that “a legal opinion to the effect that this transaction is not taxable under U.S. tax law will be obtained from the attorneys preparing the documentation” (PSI-WYBR00314).

<sup>1411</sup> See, e.g., 11/27/96 letters from Chatzky and Associates to Tallulah International Trust (PSI00131258-92) and Woody International Trust (PSI00132257-97).

<sup>1412</sup> See 3/28/96 letter from Jones Day to Lorne House discussing Fugue Ltd.’s purchase of shares of Michaels Stores common stock (PSI00136301).

Software options and underlying shares held by the offshore trusts.<sup>1413</sup> In addition, one Jones Day attorney apparently helped with the organization of Green Funding I, LLC,<sup>1414</sup> which was used by the Wyly offshore structure as a flow-through entity to send offshore funds to a private business venture – Green Mountain Energy Company – that had been acquired by the Wyllys.

Further, in 2001, when Lehman Brothers began to question whether one of the offshore corporations, Devotion, should be treated as a corporate affiliate of Michaels Stores due to the involvement of Sam Wyly in both companies, Robert Estep of Jones Day, as counsel to Michaels Stores, was actively involved. Circumstances surrounding this matter suggest that while Jones Day, as counsel to Michaels Stores, took the public position that Devotion was not an affiliate, Mr. Estep had a different view. Specifically, according to an internal Lehman Brothers email discussing a meeting that was held on the Devotion issue, “Bob [said] that Devotion is not considered an affiliate by Michaels Stores. However, he also indicated that he did not necessarily agree with that determination.”<sup>1415</sup>

From 1997 to 2003, the law firm Meadows Owens also played key roles in the design and operation of the Wyly offshore structure.<sup>1416</sup> Rodney Owens, a Meadows Owens named partner, was involved in the formation of the six Cayman sub-funds of the Isle of Man trusts. According to a May 8, 2001 fax from Michelle Boucher to Sam Wyly, “The IOM trustees have agreed to a structure that we are comfortable with and Rodney Owens is approving the final documentation. ... The sub funds will be Cayman LLCs as subsidiaries of the IOM trusts. ... They exist as a sub fund via an informal understanding with the trustees whereby we account for these entities separately and liaise with particular family members regarding the underlying assets.”<sup>1417</sup> Mr. Owens also played a key role in advising on ways to shift trust assets from the Wyly-related trusts established in 1992, to the Wyly-related

<sup>1413</sup> 1/5/96 Schedule 13D by Sam and Charles Wyly regarding Sterling Software; see also 2/12/98 letter from Jones Day to Amy Browning discussing amendments to Forms 13D filed by Sam and Charles Wyly (MSNY014682).

<sup>1414</sup> 7/31/97 Certificate of Formation of Green Funding I, LLC, signed by Jones Day counsel John McCafferty (PSI-WYBR00469).

<sup>1415</sup> 10/5/01 internal Lehman Brothers email (CC037563)(emphasis in original).

<sup>1416</sup> See, e.g., 11/2/00 email from Ms. Boucher to Ms. Robertson (PSI-WYBR00603); 5/31/01 email from Ms. Boucher to David Harris (PSI-WYBR00640)(“Keeley and I are also looking at a structure that Rodney Owens outlined to us, which builds on the partnership concept you introduced in January. It is a ‘frozen LLC’, whereby the 1992 trust would put up 95% of the funds, for a fixed return preference interest in the LLC, and [the] 1994 trust would put up 5% for a ‘common’ interest in the LLC.”).

<sup>1417</sup> 5/8/01 fax from Ms. Boucher to Sam Wyly (PSI00078291-92).

trusts established in 1994, which would yield more favorable tax benefits to the beneficiaries.

Mr. Owens and another Meadows Owens attorney, Charles Pulman, were also instrumental in setting up a U.S. trust structure enabling the Wyly-related offshore entities to provide between 95-99 percent of funding for real estate that would be used almost exclusively by Wyly family members. The formation of this structure apparently was designed to facilitate the purchase of real estate by the Wyly offshore trusts while allowing the property to be used by the Wyly family without categorizing the purchases as trust disbursements.<sup>1418</sup>

Mr. Owens was also involved in the sale by Charles Wyly of two Colorado properties to Quayle, Ltd, which involved the formation by Quayle of two U.S. corporations. According to Sharyl Robertson, “This is a non-reportable item by the Trusts and the U.S. parties. Rodney is doing the legal work.”<sup>1419</sup> In addition, Mr. Owens helped establish the Woody Creek Ranch Management Trust, through which Isle of Man funds flowed for Wyly real estate interests,<sup>1420</sup> and apparently provided advice regarding booking funding movements with respect to Little Woody Creek Ranch “from Devotion to La Fourche to Little Woody Creek Ranch as return of capital and then investment.”<sup>1421</sup>

In addition, according to Lehman Brothers, Mr. Owens served as counsel for Devotion and the Wyllys with respect to Devotion’s affiliate status, and apparently represented in discussions with Lehman Brothers’ legal counsel that Devotion was not an affiliate when Lehman Brothers raised questions about a prepaid forward sale of Michaels Stores stock by Devotion.<sup>1422</sup> At one point, the key Lehman broker, Louis Schaufele, informed Ms. Hennington that he needed “to get an email or letter from your stateside attorney that Devotion LTD is not an affiliate.” Four days later, Ms. Hennington wrote to Mr. Schaufele, asking if they ever “[got] a good answer on this or is Rodney still thinking?”<sup>1423</sup> Lehman Brothers

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<sup>1418</sup> 9/21/99 email from Ms. Robertson to Ms. Boucher (MAV07688-89).

<sup>1419</sup> 8/19/99 email from Ms. Robertson to Ms. Boucher (PSI-WYBR00529).

<sup>1420</sup> 10/1/99 Woody Creek Ranch Management Trust Agreement, prepared by Mr. Owens (BA120713-40).

<sup>1421</sup> 12/9/99 email from Ms. Boucher to Ms. Robertson (“I also asked [Rodney] to confirm how we handled the Soulieana/Tyler/Gorsemoor/Stargate Loan Funding transaction. The Trustees have booked it all through as intercompany/intertrust advances .... I want to be sure we’re okay taxwise showing it that way.”)(MAV007788).

<sup>1422</sup> 10/5/01 internal Lehman Brothers email (CC037563). Subcommittee interview of Lehman Brothers (7/27/06).

<sup>1423</sup> 10/8/01 emails between Mr. Schaufele and Ms. Hennington (CC012927).

requested but never received a written legal opinion from Meadows Owens on whether Devotion was an affiliate for Rule 144 purposes.

Mr. Owens also represented several other Wyly-related offshore corporations as U.S. counsel. Letters indicate that he served as counsel for Elyisum, Moberly, and Atlantis in 2001. SBC Communications had notified the Wyls that it intended to file a Form 1099 with the IRS with respect to a \$74 million purchase of stock options from the offshore corporations as part of its acquisition of Sterling Commerce. Mr. Owens sent letters to SBC contending that as foreign corporations in the Isle of Man, “it is not appropriate for SBC to file a Form 1099, or any other reporting papers regarding this transaction, because [the corporation] is a foreign corporation and the income from the purchase of the stock options is not subject to U.S. taxation.”<sup>1424</sup>

Mr. Owens also closely consulted with Isle of Man attorneys and trustees regarding how to cure long-standing defects that were identified in the Plaquemines Trust, Bulldog II Trust, and Pitkin II Trust. He consulted with Isle of Man counsel on the best approach to correct the defects and, when a course of action was determined, wrote to the trustee, concurring with the trustee’s “assessment that the consent of the beneficiaries should be unnecessary and indeed inappropriate for these purposes .... we would, in fact, prefer that notice of such procedures be limited to only the Trust Protectors if at all possible.”<sup>1425</sup>

Along with the structuring of entities involved in the offshore funding of real estate, Meadows Owens counsel, Mr. Pulman, also appears to have been involved in providing services to the Wyls with respect to their efforts to avoid disclosure of beneficial ownership information by the offshore entities to Bank of America. After repeated transactions triggered anti-money laundering systems at National Financial Services – the broker that provided clearing services to Bank of America – NFS pressed Bank of America to identify the beneficial owners of the Wyly-related offshore trusts. For nearly a year, the offshore entities declined to provide the information, and repeated demands and deadlines were ignored. According to Mr. Schaufele, who had moved from Lehman Brothers to Bank of America by this time, Mr. Pulman served as the offshore entities’ U.S. counsel and represented Devotion in this matter.<sup>1426</sup> Mr. Pulman and Mr. Schaufele discussed the matter by phone and Mr. Schaufele forwarded Mr. Pulman a long email written by Bank of America’s legal counsel analyzing the Patriot Act

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<sup>1424</sup> 1/26/01 letters from Mr. Owens to SBC Communications (PSI-WYBR00612-13, 16-17).

<sup>1425</sup> 12/28/98 letter from Mr. Owens to David Harris (MEOW01-02).

<sup>1426</sup> Subcommittee interview of Mr. Schaufele (7/26/06).

and concluding that the only way to keep the Wyly-related accounts open without the beneficial ownership information was to make an exception for these accounts.<sup>1427</sup>

Although many key documents and issues with respect to the offshore structures could not be provided to, or discussed with, the Subcommittee because of claims of attorney-client privilege, the log of privileged documents provided by Meadows Owens further demonstrates that Mr. Owens and Mr. Pulman – and the law firm, in general – communicated with the Wyls representatives and offshore trustees on an ongoing basis, and were heavily involved in providing legal services with respect to the Wyls' offshore structure.<sup>1428</sup> Specifically, the logs indicate that Mr. Owens was involved in matters relating to several of the offshore trusts, including the Tyler Trust, the Ginger Trust, and the Red Mountain Trust, as well as providing services related to Security Capital loans, Irish Trust, and protector issues. The logs also indicate that Mr. Pulman provided legal services to the Wyls from 2003 through 2005 with respect to such matters as foreign trust planning and the Bulldog Trust.

According to representatives from Meadows Owens, although a number of employees would have been involved in providing services with respect to the Wyls' trust structure under Rodney Owens, most communications with the Wyls and their representatives went through Mr. Owens.<sup>1429</sup> They further explained that Mr. Owens generally kept the work compartmentalized among the employees that worked beneath him, and as a result, no one except for Mr. Owens would have been privy to the larger, overall picture. In addition, although the Subcommittee found evidence that Mr. Owens represented several of the offshore corporations, according to representatives from Meadows Owens, the firm never issued an engagement letter for this work, as was normal practice, and never billed the offshore corporations for any work.<sup>1430</sup>

According to the Wyls' representatives, the Wyls also received legal assistance with respect to transactions involving pass-through loans made by the offshore corporations to Security Capital, and subsequently by Security Capital to various Wyly family interests. Specifically,

<sup>1427</sup> 5/26/04 email from Mr. Schaufele to Mr. Pulman (BA080202) ("Charles thanks for the call.").

<sup>1428</sup> See 7/7/06 and 7/14/06 letters from Meadows Owens' legal representative to the Subcommittee, enclosing privilege logs identifying communications with the Trustees that were withheld on the basis of "Attorney Work Product."

<sup>1429</sup> Subcommittee interview of Meadows Owens (7/7/06).

<sup>1430</sup> *Id.*

Meadows Owens and Jones Day each played roles in helping with the organization, development, and operations of Security Capital.<sup>1431</sup>

**POINT Transaction Legal Counsel.** U.S. law firms were also instrumental in the development and implementation of the POINT strategy. Several firms were involved in providing legal opinions to their clients with respect to these transactions, and the clients relied on these opinions to provide assurance that the strategy was in line with U.S. tax laws. The clients' own legal advisers were also involved in helping to facilitate these transactions.

Quellos engaged Cravath, Swaine & Moore to help it analyze the structure of the POINT transaction to ensure it was compliant with provisions of the tax code. Lewis Steinberg, a Cravath attorney, provided input and collaborated with Quellos – the promoter of the strategy – on the economics and structure of the strategy.<sup>1432</sup> Quellos consulted with Mr. Steinberg on the strategy's design and on the crafting of legal opinions for clients.<sup>1433</sup> One of the clients, Robert Johnson, engaged Cravath to provide him with formal legal opinions regarding the tax consequences of the POINT strategy. Mr. Steinberg indicated to the Subcommittee that he would have considered his clients to be both Mr. Johnson, who relied on the legal opinions in going forward with the transaction, as well as Quellos, which had relied on him to help analyze the transactions using his tax expertise to help ensure the transaction was legally compliant and that the tax advantages of the transaction were legal under the tax code.<sup>1434</sup> According to Mr. Steinberg, as was normal practice, he shared drafts of his legal opinions with Mr. Johnson's advisors and Quellos in order for them to provide feedback to him so that he could confirm that the facts on which the opinions were based were accurate.<sup>1435</sup> Mr. Steinberg prepared opinions on three other POINT transactions as well. It is unclear, however, whether he was provided with a complete set of facts. For example, in response to an email from Euram's John Staddon seeking assurance that the client was fully aware of the book-entry nature of the share trading between the two IOM companies, Quellos' Chuck Wilk explained that "Lew Steinberg does not address the share exchange in his opinion because according to

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<sup>1431</sup> See 1/26/06 letter and attachments from Wyly legal counsel, Bickel & Brewer, responding to Subcommittee questions about the establishment, operation, and "loans" issued by Security Capital, first attachment at 2, Chart entitled, "Professionals Involved In Development and Oversight."

<sup>1432</sup> 12/17/99 email from Chuck Wilk (PSI-QUEL13317).

<sup>1433</sup> Subcommittee interview of Mr. Steinberg (7/26/06); See also 12/1/99 email from Jeff Greenstein to Mr. Wilk (PSI-QUEL11572).

<sup>1434</sup> Subcommittee interview of Mr. Steinberg (7/26/06).

<sup>1435</sup> Id.



him the client should not know how the shares were contributed.”<sup>1436</sup> When asked about this email exchange, Mr. Steinberg did not know what it referred to and explained that he did not know how the shares had been contributed.<sup>1437</sup> Further, he emphasized that, in conducting his analysis and coming to the conclusions in his legal opinions, it would not have mattered how the shares had been contributed. He explained that, at that time, he knew of no facts that would have called into question the nature or legitimacy of the transaction.

Another law firm, Bryan Cave, was involved in Haim Saban’s purchase of the POINT strategy. Attorneys from Bryan Cave provided tax opinions with respect to the strategy for Mr. Saban and helped draft the factual representations on which the opinion was based, as well as transactional documents to help implement the strategy. The legal opinions prepared by Bryan Cave<sup>1438</sup> were based on extensive factual representation statements signed by various persons, including Mr. Saban.<sup>1439</sup> However, according to Mr. Saban, he did not read these statements before signing them.<sup>1440</sup> Further, after having now read some of the representations, Mr. Saban told the Subcommittee he could not have attested to the facts if he had read them at the time and that some of the representations were completely inaccurate. Bryan Cave also prepared an opinion on a second POINT transaction. Like Mr. Steinberg, the attorney for Bryan Cave was not aware of the nature of the underlying transactions between Jackstones and Barnville.

The Cravath opinion stated that the taxpayer expected to earn a substantial pre-tax return in relation to the potential income tax benefits generated by the strategy.<sup>1441</sup> The Bryan Cave opinion stated that the taxpayers expected to realize a short-term, pre-tax profit, even taking

<sup>1436</sup> 4/4/00 emails between Mr. Wilk and Mr. Staddon (PSI-QUEL22476).

<sup>1437</sup> Subcommittee interview of Mr. Steinberg (7/26/06).

<sup>1438</sup> U.S. Federal Income Tax Opinion to Titanium Trading Partners LLC (KS-00001092-152); U.S. Federal Income Tax Opinion to Silverlight Enterprises LP (KS-00001226-92).

<sup>1439</sup> See, e.g., Haim Saban Representation Certificate attached to Bryan Cave Tax Opinion to Titanium Trading Partners LLP (KS-00001158-62).

<sup>1440</sup> Subcommittee interview of Mr. Saban (7/19/06).

<sup>1441</sup> U.S. Federal Income Tax Opinion to Robert W. Johnson from Cravath, Swaine & Moore (PSI-RWJ000246)(“As a result of the Purchase, Investor anticipates earning an annualized pre-tax return on its net purchase price for the SPV membership interests, taking into account interest expense on the Loan and transaction expenses (including any expenses associated with the Collar, the Loan or the Purchase), that is substantial (attributable to the earnings on the Collateral and the upside potential with respect to the Stocks) in relation to the potential U.S. Federal income tax benefits attributable to the built-in loss in the Stocks held by SPV. While Investor is aware of such potential U.S. Federal income tax benefits, one of Investor’s purposes in acquiring the SPV membership interests is to earn this attractive pre-tax return.”).

into account transaction costs, without comparing the size of the anticipated profits to the tax benefits.<sup>1442</sup> However, as addressed in previous sections of this Report, profit/loss projections developed by Quellos for the POINT strategy clearly showed that the prospect of any profit (after accounting for costs) was very remote and was dwarfed by the size of the tax loss to be generated by the strategy.

Both law firms received substantial fees for their work on the POINT strategy. Cravath received at least \$125,000, and Bryan Cave received about \$1.3 million.<sup>1443</sup>

**Analysis of Issues.** The review conducted by the Subcommittee raises serious questions about the independence of the Wyly-related offshore trusts and the legitimacy of the transactions involved in the POINT strategy. Throughout the development and implementation of these structures and transactions, law firms were critical advisors, providing expertise and advice and opining that the entities and their activities were legitimate. In a number of instances, opinions and advice provided by the law firms discussed in the Report relied on incomplete or erroneous sets of facts that did not accurately reflect the true circumstances, raising concerns with respect to the legitimacy of the conclusions reached in the opinions. Further, in one instance, a law firm collaborated with the promoter in the development of a tax shelter strategy and the production of a favorable opinion letter rendered to several clients who purchased the tax shelter from the promoter.

The evidence reviewed by the Subcommittee raises serious questions about what facts the law firms used in formulating and providing their opinions, services, and advice; what advice was actually provided to the clients in some circumstances; and whether the firms had adequate practices in place to identify and review client matters that could pose significant controversies. At issue is whether, and to what extent, professionals – including lawyers – have an obligation to evaluate the facts underlying the transactions on which they opine and advise.



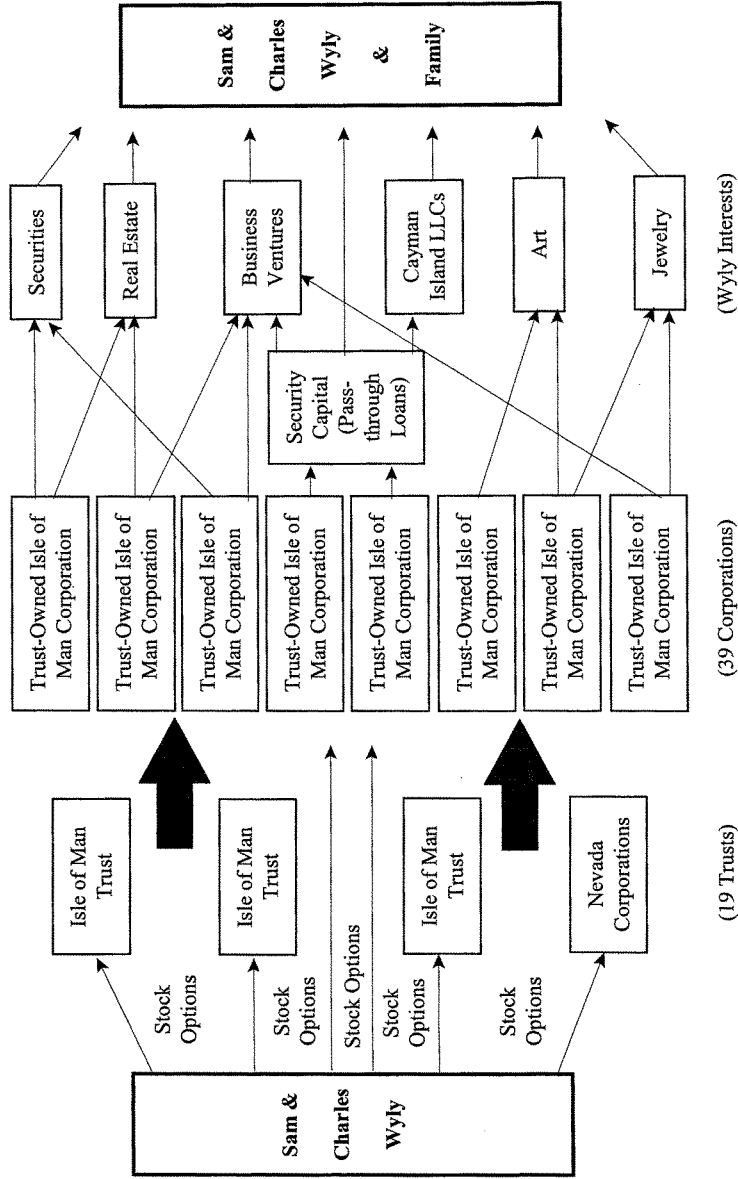

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<sup>1442</sup> U.S. Federal Income Tax Opinion to Titanium Trading Partners LLC (KS-00001137)(“The TTP members expected to realize a short-term, pre-tax profit on owning an interest in TTP, even taking into account transaction costs.”).

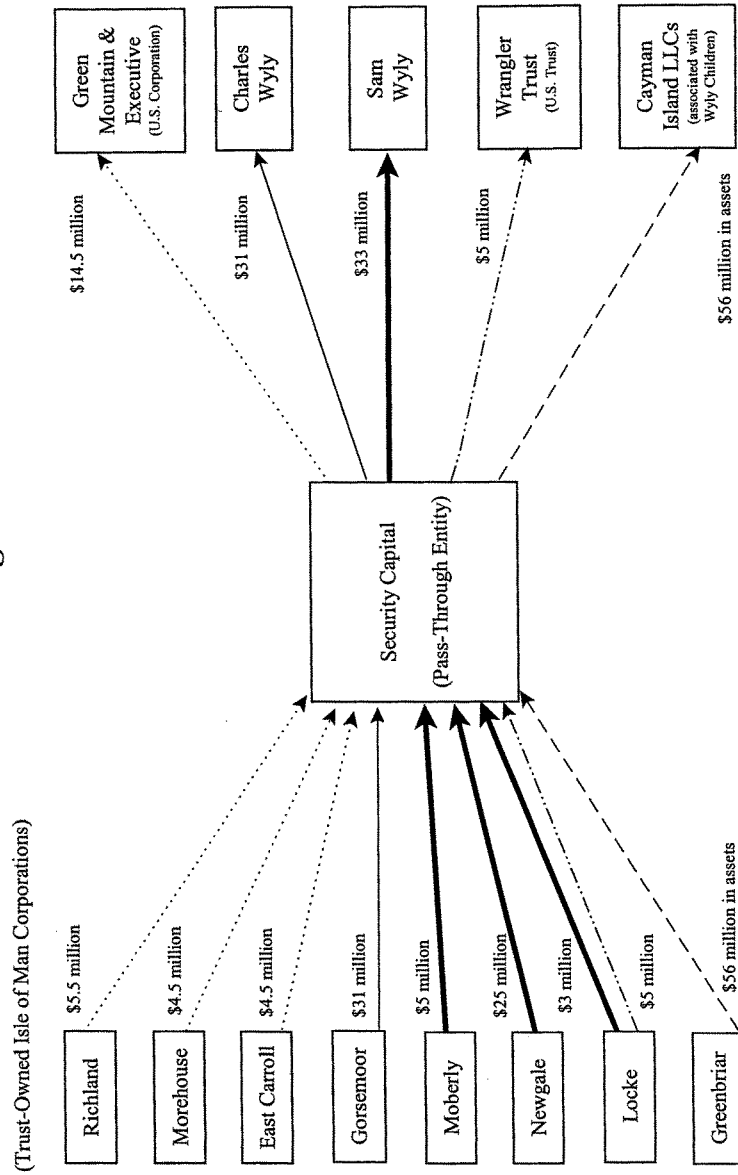
<sup>1443</sup> These legal fees were paid through Quellos, and are included as part of the total fees provided to Quellos discussed in the Report. Accordingly, the legal fees should not be added to the Quellos fees in estimating total fees for a transaction.



# Wyly Offshore Structure



# Pass-Through Loans



Permanent Subcommittee on Investigations  
EXHIBIT #2

# TRANSFERRING ASSETS OFFSHORE

## Part I: 1992 STOCK OPTION-ANNUITY SWAPS

Initial Assets	Annuitant and Annuity Date	IOM Entity Obligated to Pay Annuity	Parties Involved, Exercises
187,500 MIK options	Charles Wyly 4/13/92	Roaring Creek Limited	Charles Wyly transferred options in exchange for annuity from Roaring Creek Limited of Nevada, which assigned annuity and options to Roaring Creek Limited of IOM.
187,500 MIK options	Charles Wyly's Wife 4/13/92	Rugosa Limited	Options exercised in May and August 1992. Charles Wyly's wife transferred options in exchange for annuity from Maroon Limited of Nevada, which assigned annuity and options to Rugosa Limited of IOM.
166,500 SSW options & 169,432 SSW warrants	Charles Wyly 4/15/92	Little Woody Limited	Options exercised in May and August 1992. Charles Wyly transferred options in exchange for annuity from Little Woody Limited of Nevada, which assigned annuity and options to Little Woody Limited of IOM.
166,500 SSW options & 169,432 SSW warrants	Charles Wyly's Wife 4/15/92	Roaring Fork Limited	Options exercised May 1992; warrants exercised January 1994. Charles Wyly's wife transferred options in exchange for annuity from Roaring Fork Limited of Nevada, which assigned annuity, options and warrants to Roaring Fork Limited of IOM.
375,000 MIK options	Sam Wyly 4/13/92	East Baton Rouge Limited	Options exercised May 1992; warrants exercised January 1994. Sam Wyly transferred options in exchange for annuity from East Baton Rouge Limited of Nevada, which assigned annuity and options to East Baton Rouge Limited of IOM.
100,000 MIK warrants & 110,000 MIK options	Sam Wyly 4/13/92	Tensas Limited	Options exercised May and August 1992. Sam Wyly transferred options in exchange for annuity from Tensas Limited of Nevada, which assigned annuity and warrants and options to Tensas Limited of IOM.
			Options and warrants exercised May 1992.

Permanent Subcommittee on Investigations

EXHIBIT #3

Initial Assets	Annuity and Annuity Date	IOM Entity Obligated to Pay Annuity	Parties Involved, Exercises
667,000 SSW options	Sam Wyly 4/15/92	East Carroll Limited	Sam Wyly transferred options in exchange for annuity from East Carroll Limited of Nevada, which assigned annuity and options to East Carroll Limited of IOM. Options exercised May 1992.
204,725 SSW warrants	Sam Wyly 4/15/92	Morehouse Limited	Sam Wyly transferred options in exchange for annuity from Morehouse Limited of Nevada, which assigned annuity and options to Morehouse Limited of IOM. Warrants exercised January 1994.
240,000 SSW warrants	Sam Wyly 4/15/92	Richland Limited	Sam Wyly transferred warrants in exchange for annuity from Richland Limited of Nevada, which assigned annuity and options to Richland Limited of IOM. Warrants exercised January 1994.
200,000 SSW warrants	Sam Wyly 4/15/92	West Carroll Limited	Sam Wyly transferred options in exchange for annuity from West Carroll Limited of Nevada, which assigned annuity and options to West Carroll Limited of IOM. Warrants exercised January 1994.

Part II: 1996 STOCK OPTION-ANNUITY SWAPS

Initial Assets	Annuity and Annuity Date	IOM Entity Obligated to Pay Annuity	Parties Involved, Exercises
100,000 MIK options & 300,000 SSW options	Charles Wyly 2/22/96	Souleiana Limited	Charles Wyly transferred options to Woody International Trust of IOM, which transferred them to Souleiana in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly.
350,000 MIK options & 250,000 SSW options	Charles Wyly 2/22/96	Quayle Limited	SSW options exercised February 1996. MIK options exercised August 2000. Charles Wyly transferred options to Maroon Creek Trust of IOM, which transferred them to Quayle in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly.
333,334 SSW options	Charles Wyly 2/22/96	Elegance Limited	SSW options exercised March 1996. MIK options exercised August 2000. Charles Wyly transferred options to Lincoln Creek Trust of IOM, which transferred them to Elegance in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly.
1.6 million Sterling Commerce options	Charles Wyly 3/7/96	Elysium Limited	Options exercised in May and June 1996. Charles Wyly transferred options to Woody International Trust of IOM, which transferred them to Elysium in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly.
666,666 SSW options	Sam Wyly 2/22/96	Devotion Limited	Options exercised April 1998, May 1999 and March 2000. Sam Wyly transferred options to the Sitting Bull Trust of IOM, which transferred them to Devotion in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly.
300,000 SSW options	Sam Wyly 2/22/96	Fugue Limited (renamed in 1997 Audubon Asset Limited)	Options exercised in May and June 1996. Sam Wyly transferred options to Crazy Horse Trust of IOM, which transferred them to Fugue in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly.



Initial Assets	Annuitant and Annuity Date	IOM Entity Obligated to Pay Annuity	Parties Involved, Exercises
650,000 SSW options	Sam Wyly 2/22/96	Locke Limited	Sam Wyly transferred options to Crazy Horse Trust of IOM, which transferred them to Locke in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly.  Options exercised in February and March of 1996.
150,000 SSW options	Sam Wyly 2/22/96	Sarnia Investments Limited	Sam Wyly transferred options to Arlington Trust, which transferred them to Sarnia in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly.  Options exercised in March 1996.
900,000 MIK options	Sam Wyly 2/22/96	Yurta Faf Limited	Sam Wyly transferred options to Tallulah International Trust of IOM, which assigned them to Yurta Faf in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly.  Options exercised between March 2000 and September 2001.
3,000,000 Sterling Commerce options	Sam Wyly 3/7/96	Moberly Limited	Sam Wyly transferred options to Crazy Horse Trust which transferred them to Moberly in exchange for annuity. Trust terminated on 12/31/96 and transferred annuity to Mr. Wyly.  Options exercised April 1998 and January 1999.

**Parts III and IV: 1999 AND 2002 TRANSFERS OF STOCK OPTIONS FOR CASH**

<b>Transfer Date</b>	<b>Assets</b>	<b>Transferor and Transferee</b>	<b>Cash Paid</b>
9/30/1999	1,525,000 Sterling Software options (converted to 859,185 CA options in 2000)	Sam Wyly to East Carroll Limited	\$13,668,880
9/30/1999	200,000 Sterling Software options (converted to 112,680 CA options in 2000)	Sam Wyly to Greenbriar Limited	\$1,771,400
9/30/1999	800,000 Sterling Software options (converted to 450,720 CA options in 2000)	Stargate, Ltd (partnership of which Charles Wyly is general partner) to Quayle Limited	\$7,170,560
9/30/1999	100,000 Sterling Software options (converted to 56,340 CA options in 2000)	Stargate, Ltd to Elegance Limited.	\$885,700
9/30/1999	462,500 Sterling Commerce options	Sam Wyly to Greenbriar Limited	\$2,357,657
9/30/1999	250,000 Sterling Commerce options	Stargate, Ltd. to Elegance Limited	\$1,274,409
<b>Transfer Date</b>	<b>Assets</b>	<b>Transferor and Transferee</b>	<b>Cash Paid</b>
7/23/2002	859,185 CA options (converted from 1,525,000 Sterling Software options in 2000)	Sam Wyly to Greenbriar Limited	\$2,213,776
7/23/2002	112,680 CA options (converted from 200,000 Sterling Software options in 2000)	Sam Wyly to Greenbriar Limited	\$329,026
7/23/2002	450,720 CA options (converted from 800,000 Sterling Software options in 2000)	Stargate, Ltd. to Quayle Limited	\$1,161,325
7/23/2002	56,340 CA options (converted from 100,000 SSW options in 2000)	Stargate, Ltd. to Quayle Limited	\$164,513

**SOME DIRECTIONS BY THE WYLY TRUST PROTECTORS**

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"Mike French and I would like to recommend to the Trustee to purchase the following security from Sam Wyly...in one of the foreign corporations owned by Bulldog Trust."

-10/9/02 10/9/92 letter from Sharyl Robertson

---

"The protectors are prepared to recommend that the trustees...move the stock out in the market...at no less than \$15 per share."

-5/23/01 email from Michelle Boucher

---

"Here's a brief outline of the usual process...for acquisitions [of art]...I usually get the invoice...and forward it to IOM...indicating that 'the protectors recommend payment.'"

-2/7/02 email from Michelle Boucher

---

"The protectorate committee recommended that you consider that the Tyler Trust (Soulieanna) consider the purchase of collectibles and art work. I am attaching the following invoices" totalling \$450,278.87.

-2/12/97 fax from Sharyl Robertson

---

"Shari Robertson and I, as protectors, recommend that the trustee consider contributing \$10,000 to the lobbying effort...."

-6/9/95 fax from Michael French

---

"The protectors recommend that you make a further investment in Woody Creek Management Trust in the amount of \$500,000."

-3/3/00 email from Michelle Boucher

---

"The protectors recommend that Audubon Asset Limited uses the proceeds from Scottish Holdings, Ltd to make arrangements to repay the intercompany advances" totaling over \$4.1 million.

-2/1/00 email from Michelle Boucher

---

"Would you please advise me if there would be adequate cash on hand for the protectors to make a recommendation to purchase \$350,000 worth of jewelry."

-12/1/99 email from Sharyl Robertson

---

"The protectors recommend the purchase of French Empire chandelier" for \$24,421.20.

-8/11/97 fax from Sharyl Robertson and Michael French

---

"We are buying \$2.5M worth of \$35 CA calls.... I've picked Sarnia for the transaction."

-6/15/01 email from Michelle Boucher

---

Permanent Subcommittee on Investigations

**EXHIBIT #4**

## SOME DIRECTIONS BY THE WYLY TRUST PROTECTORS

---

"SW said sounds fine to sell FUND from Devotion to 92 trusts.... Do you want me to advise the trustees and Lara?"

-7/21/99 email from Sharyl Robertson

---

"It appears we should be able to fund Green Mountain from Morehouse and Richland."

-7/21/99 email from Sharyl Robertson

---

"The Committee of Trust Protectors wishes to make the following recommendations to the Trustee. To exercise 210,000 Michaels Stores Options held in Tensas Limited, which is owned by the Bulldog Non-Grantor Trust using a cashless exercise...."

-4/20/92 letter from Michael French to Sharyl Robertson

---

"The Committee of Trust Protectors wishes to make the following recommendations to the Trustee...to exercise 200,000 Michaels Stores Options held in East Baton Rouge Limited...."

-4/20/92 letter from Michael French to Sharyl Robertson

---

"The Committee of Trust Protectors wishes to make the following recommendations...to exercise 667,000 Sterling Software, Inc. options held by East Carroll Limited which is wholly owned by the Bulldog Non-Grantor Trust using the cash loaned by Tensas Limited and East Baton Rouge Limited to exercise the stock."

-4/20/92 letter from Michael French to Sharyl Robertson

---

"The committee also recommends that you consider establishing a line of credit for the following corporations with Chemical Bank (Guernsey): East Carroll Limited for \$8,000,000 and East Baton Rouge Limited for \$2,000,000."

-4/20/92 letter from Michael French to Sharyl Robertson

---

"Please ask the committee of protectors who we should appoint as proxy for the Michaels Stores annual general meeting."

-5/12/92 fax from Russell Collister to Sharyl Robertson

---

"Shari and I recommend that the Trustees consider the following investments...."

-3/21/95 fax from Michael French and Sharyl Robertson

---

"I recommend that you immediately contact Lehman Brothers (Lou Schaufele...) regarding the acquisition of two year call options to purchase Sterling Software at the market. These would be acquired by the Plaquemines Trust and another trust...."

-7/10/95 fax from Michael French

---

## SOME DIRECTIONS BY THE WYLY TRUST PROTECTORS

---

"Please arrange for the following amounts to be wired to Scottish Holdings on behalf of Bessie & Tyler [Trusts]. I suggest you use funds from Bulldog and Pitkin entities, preferably Morehouse and Roaring Fork."

-12/14/95 fax from Michelle Boucher

---

"Michelle [Boucher] has already been in touch with your office regarding the need for two new corporate subsidiaries for each of the Bessie and Tyler trusts (total of four corporations), plus one for the Chisolm trust. These must be in place in order to do the annuity assignments which we would like to finalize by tomorrow."

-2/21/96 fax from Michael French

---

"The protectorates committee recommends the acquisition of a piece of artwork for Fugue Limited.... The painting is at Sotheby's U.K. for sale for GBP 155,500."

-7/18/96 fax from Michelle Boucher

---

"That the trust, in accordance with the wishes of the Committee of Trust Protectors, purchase the "Noon Day Rest" painting from Sotheby's at a cost of £155,500.00 and that it be delivered to...Dallas, Texas."

-7/29/96 resolution of the trustees of the Bessie Trust

---

"The undersigned Protector of The Bessie Trust has consulted with the first-named US beneficiary of the Trust regarding the proposed purchase by the Trust of certain works of art.... The Protectors do not object to the purchase of such works of art by the Trust."

-11/25/96 fax from Michael French

---

"The protectorate committee recommends that Little Woody Limited and Roaring Fork Limited redeem all of their holdings in Maverick Income Fund LDC, and invest the proceeds directly into Maverick Fund Ltd."

-12/16/96 fax from Michelle Boucher

---

"We understand that you are concerned that the following documents which we are asking you to sign as Trustees of the Tyler Trust appear to be more favourable to the beneficiaries of the South Madison Trust than to the beneficiaries of the Tyler Trust. It is nevertheless our wish that you should sign them on behalf of the Tyler Trust and we hereby indemnify you against any costs of any nature...."

-1/5/98 letter from Sharyl Robertson and Charles Wyly

---

## SOME DIRECTIONS BY THE WYLY TRUST PROTECTORS

---

"The cash call [for Greenmountain] in total is \$10,000,000. (The protectors are recommending leaving the \$10,000,000 loan to Security Capital outstanding at this time, more on that later.)"

-11/19/98 fax from Sharyl Robertson and Michael French

---

"I have begun discussions with Lou to collapse the SSW/SE collars.... Moberly needs to exercise 300,000 shares of SE and sell the shares to Greenbriar/Sarnia prior to 2/9/98."

-1/11/99 email from Sharyl Robertson

---

"The Protectors committee would like to recommend that E. Carroll (let me know if there's a better selection) redeem \$2,000,000 of Maverick Fund, Ltd., and invest the proceeds in Maverick Levered Fund, Ltd., effective as of 4/1/99."

-3/16/99 email from Sharyl Robertson

---

"As in the past, the protectorate committee recommends that Tyler Trust (Soulieana Limited) consider the purchase of collectibles and artwork. I am attaching [16] invoices from Marguerite Theresa Green and Associates, Inc. totalling \$224,298.26...If possible, could these funds be wired AS SOON AS POSSIBLE...."

-4/21/99 fax from Sharyl Robertson

---

"If we want to liquidate US Government [bonds] for CW entities - (Quayle Limited) for the option exercise then [Lou Schaufele] would like to liquidate these today.... Let me know how you feel about this...."

-12/23/99 email from Michelle Boucher

---

"The protectors recommend that you make arrangements for a further exercise and sale of another tranche of 200,000 options with the same price parameters of \$30 or better and maintain the same pro-rata split between Yurta Faf and Dortmund."

-1/11/00 email from Michelle Boucher

---

"I have also been advised today that the protectors recommend that donations also be made to an organization called "A Grassroots Aspen Experience".... Hopefully you can make the amendments to the deed of inclusion for La Fourche trust...."

-2/8/00 email from Michelle Boucher

---

"The protectors recommend the purchase of \$5 million Amazon Bonds from Morgan Stanley."

-2/14/00 email from Sharyl Robertson

---

### **SOME DIRECTIONS BY THE WYLY TRUST PROTECTORS**

---

"I will move the cash to IOM this week from Lehmans. Then I could get it to you on a next day basis, but would prefer 2-3 days warning, especially given the trustees I have to deal with on this one—they are pretty good, but not always as quick as the other firm."

-2/16/00 email from Michelle Boucher

---

"As per the recent cash flow projections, the protectors recommend that you make arrangements for the \$6.5M funding for March to be paid over to Green Funding 1 at your earliest convenience. I suggest that you make arrangements to utilize funds on hand at Moberly Limited with Bank of Bermuda, as well as those that were realized on the recent SSW swap reset."

-3/6/00 email from Michelle Boucher

---

"Since the cash is in Bessie, and needs to be used to buy Woody Creek Ranch Limited from Devotion, I propose that we transfer what we need to over to Devotion now...."

-2/9/00 email from Michelle Boucher

---

"East Carroll should go to Ranger Fund LLC. Locke's money should go to Ranger Fund Ltd."

-5/31/01 email from Michelle Boucher

---

"The protector's committee would like to make a recommendation to make a gift of \$100,000 to the Humble Legal Foundation from LaFourche Trust."

-6/16/00 email from Sharyl Robertson

---

"The protectors recommend that the trustees invest a further \$2M into First Dallas International Limited for July 1st, 2000."

-6/22/00 email from Michelle Boucher

---

2140818045

• 10TH FLOOR

F-265 T-354 P-002/004 OCT 09 '92 1-

8080 N Central Expressway  
Dallas, Texas 75206  
(214) 891-8341

October 9, 1992

Mr. Ronnie Buchanan  
Lorne House Trust  
Lorne House  
Castletown  
Isle of Man  
British Isles

Re: Bulldog Trust


Dear Ronnie:

Mike French and I would like to recommend to the Trustee to purchase the following security from Sam Wyly:

238,767 shares of Photomatrix Corporation @ \$.12 per share  
for \$26,264.37.

We would recommend that this stock be purchased in one of the foreign corporations owned by Bulldog Trust. Please advise if you wish to proceed with this sale. I am out of town next week but Mike French could take care of the transfer of securities.

Regards,

  
Sharyl Robertson

cc: Michael French

Attachments: Photomatrix Corporation certificate # 89 for 238,767 shares

EBR 3330,781 - \$K  
\$570,660 - MIC

teno \$260,000 - \$K  
\$161,868 - \$K

CONFIDENTIAL  
PSI00118984



© DWIGHT & M. H. JACKSON  
CORPORATION SUPPLY CO.  
CHICAGO, ILLINOIS 60606

( RESERVE THIS SPACE TO PASTE BACK CANCELLED STOCK CERTIFICATE )

IF NOT AN ORIGINAL ISSUE SHOW DETAILS OF TRANSFER BELOW		Original Certificate		No. of Shares
Transferred from	No.	Date	Transferred	Transferred
PHOTOMATRIX CORPORATION	105	For 238,767 Shares	89	1/10/92 238767 238767
Issued to	106	11/9/92		
TENSAS LIMITED				
LOREN HOUSE TRUST LTD				
CASTLETOWN, ISLE OF MAN,				
BRITISH ISLES				
Received this Certificate 13th Jan 1993				
Surrendered this Certificate 10				

CONFIDENTIAL  
PSI00118985

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Subcommittee on Investigations



"Michelle Boucher "  
<mboucher@>

To: <evan\_wyly@>  
cc:  
Subject: SCOT shares - tradeable stock

05/23/2001 01:26 PM

On Friday May 18th, Lehmans confirmed a closing price on SCOT of \$15.13 and booked the sale of 270,000 shares between IFG and Trident entities. The trustees at Trident are now able to sell these shares in the market.

The stock has been selling between \$14.75 and \$15.75 for the past two weeks. The protectors are prepared to recommend that the trustees use Lou Schaufele to move the stock out in the market, at his discretion but at no less than \$15 per share. The trustees will also ask Lou to keep an eye out for any opportunities for large block trades. The protector recommendation will go out overnight and trading should commence tomorrow.

I'll keep you updated on trading volume and pricing.

Michelle

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[D]  
CONFIDENTIAL  
PSI\_ED00087608

Hotmail Message

Page 1 of 1

Here's a brief outline of the usual process and what should/does happen for acquisitions:

Invoice should be addressed to Audubon and should be faxed directly to them in IOM with a copy to me, and to Rena if she thinks she would like one (otherwise it is not necessary). Originals should be mailed to Audubon in IOM.

I usually get the invoice, either directly from the Gallery or from Rena, and forward it to IOM with a cover note indicating that "the protectors recommend payment for the attached artwork that was recently acquired by Audubon". They wait for this prior to releasing payment.

Regarding the Ellenshaw - I received the invoice dated January 12th, 2002 on January 15th. I had no notice of the acquisition other than a one page fax through the machine. Sometimes I get a heads up to expect something and sometimes not. If not, I usually send a message to Sam asking to confirm the acquisition. I realize this acquisition was from Elliott Yeary Gallery, but I think it's important to go through the usual process for all circumstances.


The invoice was faxed out to the Trustees from my office on January 28th requesting payment. They should have remitted the payment by now, it usually takes about 5 days to co-ordinate raising the cash and making the wire transfer. I'll follow up on the payment and let you know in the morning.

<http://lw10fd.law10.hotmail.msn.com/cgi-bin/getmsg?curmbox=F000000001&a=0909089...> 2/10/2002


EYG01128

**FAX TRANSMITTAL**

— = Redacted by the Permanent  
Subcommittee on Investigations

TO: **Ronnie Buchanan**FROM:  **Shari Robertson**COMPANY: **Lorne House Trust**PHONE: (214) 

PHONE:

FAX: (214) 

FAX:

DATE: **February 12, 1997**NUMBER OF PAGES (including cover): **26**TIME: **11:24 AM****COMMENTS:**

As you will remember, the protectorate committee recommended that you consider that the Tyler Trust (Soulieanna) consider the purchase of collectibles and art work. I am attaching the following invoices from Maguerite Theresa Green and Associates, Inc.:

Invoice 21801 for \$44,166.00  
 Invoice 21806 for \$ 9,093.00  
 Invoice 21807 for \$37,619.04  
 Invoice 21808 for \$ 5,975.40  
 Invoice 21809 for \$ 2,857.80  
 Invoice 21810 for \$ 8,573.40  
 Invoice 21800 for \$ 3,637.20  
 Invoice 21799 for \$13,509.60  
 Invoice 21797 for \$14,289.00  
 Invoice 21796 for \$ 3,377.40  
 Invoice 21788 for \$32,475.00  
 Invoice 21787 for \$ 8,261.64  
 Invoice 21784 for \$175,365.00  
 Invoice 21782 for \$12,178.13  
 Invoice 21781 for \$ 7,066.56  
 Invoice 21780 for \$15,588.00  
 Invoice 21771 for \$ 2,078.40  
 Invoice 21770 for \$ 3,897.00  
 Invoice 21766 for \$ 1,818.60  
 Invoice 21798 for \$ 1,039.20  
 Invoice 21803 for \$14,029.20  
 Invoice 21804 for \$16,237.50  
 Invoice 21805 for \$17,146.80

Invoice total = \$450,278.87

Maverick Capital • 8080 North Central Expressway • Suite 1300 • LB-31 • Dallas, Texas 75206-1895

CONFIDENTIAL  
 SEC100066649  
 PSI00078516

Wire funds to:  
First National Bank of Park Cities  
Dallas, Texas  
ABA 111014325  
For the account of:  
Marguerite Theresa Green and Associates, Inc.  
Special Project  
Acct # [REDACTED]

[REDACTED] = Redacted by the Permanent  
Subcommittee on Investigations

I am obtaining insurance on behalf of Souleiana as requested. Pictures of the art work and collectibles will come by courier with the original invoices. The property is presently in storage but will eventually reside at [REDACTED], Dallas, Texas 75225. The decorator has been told to devise an inventory tagging system. When the project is completed, I'll have a copy sent. If there is anything else you would like me to attend to, let me know. Would you please advise when the funds are wired out.

Copy: Michelle Boucher



Maverick Capital • 8080 North Central Expressway • Suite 1300 • LB-31 • Dallas, Texas 75206-1895

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PS100078517

CL40310640

10TH FLOOR

F-185 T-115 P-001

JUN 09 '95 14

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Subcommittee on Investigations

**FAX TRANSMITTAL****Maverick**

TO: **Ronald Buchanan** FROM: **Mike French**  
 COMPANY: **Lorne House Trust** PHONE: 214 [REDACTED]  
 PHONE: **44 624 823 579** FAX: **214 [REDACTED]**  
 FAX: **44 624 822 952** DATE: **June 9, 1995**  
 NUMBER OF PAGES (including cover): **3** TIME: **2:56 PM**

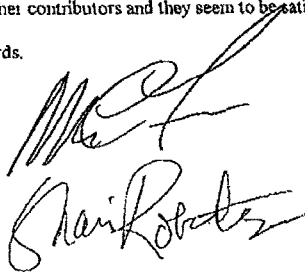
**COMMENTS:****RE: Bulldog and Pitkin**

Shari Robertson and I, as protectors, recommend that the trustee consider contributing \$10,000 to the lobbying effort described in the attached letter from Robert C. Taylor, an attorney here in Dallas who has been active in the offshore trust area for many years and who claims to know you.

We recommend that the contribution be split 2/3-1/3. You should contact Mr. Taylor direct to arrange for transfer of the funds, assuming you concur. We recommend that the funds be identified as being from Lorne House, rather than mentioning the trusts by name.

As I am sure you are aware, the proposals in Congress will create an enormous burden on offshore trusts (and their trustees). Perhaps you would like to contribute on your own as well. So far, the effort Bob has launched appears to have had some success. I am acquainted with some of his other contributors and they seem to be satisfied.

Regards.



Maverick Capital • 8080 North Central Expressway • Suite 1300 • LB-31 • Dallas, Texas 75206-1895

09-JUN-1995 21:01

2148918245

P.001

CONFIDENTIAL  
PSI00121698

From: Michelle Boucher <mboucher@[REDACTED]>  
Sent: Friday, March 3, 2000 10:13 AM  
To: Francis Webb (E-mail) <fwebb@[REDACTED]>  
Cc: Shari Robertson  
Subject: Woody Creek Ranch Limited

---

[REDACTED] = Redacted by the Permanent  
Subcommittee on Investigations

The protectors recommend that you make a further investment in Woody Creek Management Trust in the amount of \$500,000 (five hundred thousand dollars). These funds are required to ensure that the properties have ready cash available to acquire additional TDR's (up to 6, averaging \$150K each) should they come available. It is my understanding that the property manager hopes to acquire these by the end of April when it is expected that plans for the development will be submitted for approval.

I believe there is sufficient cash available in Devotion Limited to fund such additional investment. Please let me know if you need me to re-confirm wire instructions, which you should have on hand.

If you have any questions, please call.

Michelle

**MAV007955**

From: Michelle Boucher <mboucher@[REDACTED]>  
Sent: Tuesday, February 1, 2000 2:17 PM  
To: Ken Jones (E-mail) <kennethj@[REDACTED]>  
Cc: Shari Robertson  
Subject: Audubon Asset Limited

---

[REDACTED] = Redacted by the Permanent  
Subcommittee on Investigations

The protectors recommend that Audubon Asset Limited uses the proceeds from Scottish Holdings, Ltd to make arrangements to repay the intercompany advances as follows:

Repay Locke Limited \$1,453,319.52 being advances for art acquisitions  
Repay Richland Limited \$1,921,000.00 being advances for art acquisitions  
Repay Yurta Faf Limited \$ 741,170.83 being cumulative payment of fees on behalf of Yurta Faf, net of the \$750,000 recently loaned by Yurta Faf to fund the acquisition of the Benjamin Franklin painting.

If you have any questions, or different figures, please contact me to discuss.

Michelle

**MAV007849**



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Subcommittee on Investigations

Shari Robertson  
12/01/1999 01:28 PM

To: dbester@ [REDACTED] webb@ [REDACTED]  
cc: mboucher@ [REDACTED]  
Subject: Tyler Trust - Souleanna

Michelle is out of town this week. Would you please advise me if there would be adequate cash on hand for the protectors to make a recommendation to purchase \$350,000 worth of jewelry. Payment would need to be made sometime during December. I understand that the appraised value of the jewelry is \$450,000 and the purchase would be with Eiseman Jewelers in Dallas Texas. Initially the jewelry would be shipped to [REDACTED] Woody Creek, Co. and would eventually be in safekeeping at [REDACTED] Dallas, Texas. Michelle or I can arrange for insurance coverage if you like.

Confidential  
SEC\_ED00043973

PSI\_ED00043973

11-0115-1997 20:47

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## FAX TRANSMITTAL

TO: **Ronnie Buchanan** FROM: **Shari Robertson, Mike French**

COMPANY: **Lorne House Trust** PHONE: (214) [REDACTED]

PHONE: **011 441624 823579** FAX: (214) [REDACTED]

FAX: **011 441624 822952** DATE: **August 11, 1997**

NUMBER OF PAGES (including cover): TIME: **11:49 AM**

Re: Tyler Trust, Soulisana

The protectors recommend the purchase of French Empire chandelier, Marvin Alexander #69-8690, 8-light, circa 1820 for a purchase price of \$24,421.20 from Marguerite Theresa Green and Associates, Inc. If you proceed with the purchase, the wiring instructions are as follows.

First National Bank of Park Cities  
Dallas, Texas  
ABA 111014325  
For the account of:  
Marguerite Theresa Green and Associates, Inc.  
Special Project  
Acct# [REDACTED]

Copy: Michelle Boucher

*Shari Robertson*  
*Mike French*

*Yes per 1*  
*JS*

300 Crescent Court • Suite 1000 • Dallas, Texas 75201

11-0115-1997 20:47

2146884852

P.001

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PSI00119590

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**From:** "Michelle Boucher" <mboucher@[REDACTED]>  
**Sent:** Friday, June 15, 2001 3:02 PM  
**To:** <khennington@[REDACTED]>  
**Subject:** fyi, transaction we are doing in the trusts re:CA

We are only doing this from offshore, but you should be aware. I've advised Shari as protector and she is on board. I've also cleared it through McCafferty to ensure we weren't doing anything to close to the date of Sam's planned activities. He is okay with it.

We are buying \$2.5M worth of \$35 CA calls that expire on August 17th. Paying a premium of approx 7.29% which at the current trading price of \$32.50 is \$2.37 per call. This is all being done through Lou. I've picked Sarnia for the transaction and sent everything to IFG. It should get put together Monday am, everyone has my numbers to reach me if they need to.

Michelle

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PSI\_ED00013896

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Shari Robertson  
07/21/1999 08:43 AM

To: mboucher@  
cc:  
Subject: Talked to SW

SW said sounds fine to sell FUND from Devotion to 92 trusts. I took a look at financial, and looks like we can do this:

E. Carroll	\$1,000,000
E. Baton	\$1,000,000
Moberly	\$1,000,000
W. Carroll	\$2,000,000
Tensas	\$ - Balance

Do you want me to advise the trustees and Lara?

Devotion can then purchase large property.

Redeem Edinburgh in Devotion and Relish. I've left a message for Jason that he needs to have cash to do this as of 8/1/99. Devotion will need to loan some money to Relish and Relish can buy the small property (or vice-a-versa).

It appears we should be able to fund Green Mountain from Morehouse and Richland. They need money on 8/1/99, I'm waiting on an amount.

I've talked to Ken Jones this morning to verify the Michaels options held in Yurta Faf expire August 2000. We're going to start exercising and selling at 25,000 shares per week starting next week. Do you want me to keep tabs on this or do you want Lara to handle? Will probably have Dortmund, etc follow

Confidential  
SEC\_ED00042517

PSI\_ED00042517

April 20, 1992

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Lorne House Trust Company Limited  
Lorne House  
Castletown  
Isle of Man  
British Isles  
Attn.: Mr. R. Buchanan

Re: Bulldog Non-Grantor Trust

Dear Ronnie:

Pursuant to Section 8 of the Bulldog Non-Grantor Trust Agreement dated March 11, 1992 the Committee of Trust Protectors wishes to make the following recommendations to the Trustees.

To exercise 210,000 Michaels Stores Options held in Tensas Limited, which is owned by the Bulldog Non-Grantor Trust using a cashless exercise thru First Boston Corporation, 3100 Texas Commerce Tower, 2200 Ross Avenue, Dallas, Texas 75201, Mr. Lou Schaefe, phone # (214) [REDACTED]. The committee recommends selling all of the stock at a price to a least exceed \$20.00 per share. The exercise price of the stock is \$3.00 a share, requiring \$610,000 to exercise the stock with Michaels Stores, Inc. Cash in excess of exercise price should exceed \$3,570,000. The committee recommends a loan at 6% interest rate, to mature in one year, of \$3,500,000 to East Carroll Limited which is owned by the Bulldog Non-Grantor Trust. The committee recommends that cash in excess of the loan be invested in short term, cash-like securities, with some currency risk that you as Trustees feels competes with U.S. certificates of deposits yielding around 4 %.

To exercise 200,000 Michaels Stores Options held in East Baton Rouge Limited which is owned by the Bulldog Non-Grantor Trust using a cashless exercise thru First Boston Corporation, 3100 Texas Commerce Tower, 2200 Ross Avenue, Dallas, Texas 75201, Mr. Lou Schaefe, phone # (214) [REDACTED]. The committee recommends selling all of the stock at a price to a least exceed \$20.00 per share. The exercise price of the stock is \$3.00 a share, requiring \$600,000 to exercise the stock with Michaels Stores, Inc. Cash in excess of exercise price should exceed \$3,400,000. The committee recommends a loan at 6% interest rate, to mature in one year of \$568,750 to East Carroll Limited which is owned by the Bulldog Non-Grantor Trust. The committee recommends that cash in excess of the loan be invested in short term, cash-like securities, with some currency risk that you as Trustees feels competes with U.S. certificates of deposits yielding around 4 %.

To exercise 667,000 Sterling Software, Inc. Options held by East Carroll Limited which is wholly owned by the Bulldog Non-Grantor Trust using the cash loaned by Tensas Limited and East Baton Rouge Limited to exercise the stock.

WYLY 04704

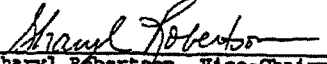
PSI00010380

The exercise price is \$6.25 per share for a total exercise price of \$4,168,750. The committee recommends that East Carroll Limited hold the Sterling Software, Inc. stock.

The committee also recommends that you consider establishing a line of credit for the following corporations with Chemical Bank (Guernsey): East Carroll Limited for \$8,000,000 and East Baton Rouge Limited for \$2,000,000.

Committee of Trust Protectors:

  
Michael C. French, Chairman

  
Sharyl Robertson, Vice-Chairman  
and Secretary

WYLY 04705

PSI00010381

**Six Page Fax**

Attn: Shari Robertson, Sterling Software Inc  
From: Russell Collister

12th May 1992

1. Thank-you for your fax of the 12th May. We shall forward the hard copy of the letters which accompany this fax to yourself at Sterling Software.

2. We have received two notices of beneficial ownership of stock in Sterling Software from Albert Hoover regarding The Bulldog and The Pitkin Non-Grantor Trusts. Please let us know which box we should tick and what narrative, if any, we should insert below the boxes.

3. We have received a report from Lou Schaufele notifying us that he has sold 10000 shares in Michael Stores at \$21.50 net for the account of Tensas Limited

4. To subscribe to The Financial Times you should contact their New York office. The address is 14 East 60th Street, New York 10022.

5. Please ask the committee of protectors who we should appoint as proxy for the Michael Stores annual general meeting.

Regards,



Russell Collister

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PSI00135882

F-954 7-177 P-001 MAR 21 '95 12:4

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Subcommittee on Investigations

**CONFIDENTIAL****FAX TRANSMITTAL****Maverick**

TO: Ronald Buchanan FROM: Mike French/Shari  
Robertson

COMPANY: Lorne House Trust PHONE: 214 [REDACTED]

PHONE: 44 624 823 579 FAX: 214 [REDACTED]

FAX: 44 624 822 952 DATE: March 21, 1995

NUMBER OF PAGES (including cover): TIME: 8:27 AM

**COMMENTS:**

Shari and I recommend that the Trustees consider the following investments:

An aggregate \$3.5 million in one-half of one unit being offered in a private transaction by Boston Chicken, consisting of a \$2.5 million investment in BC Funding, a funding vehicle for Boston Chicken franchisees, and \$1 million in a new company being formed by Boston Chicken to develop a nationwide chain of bagel stores.

An aggregate of \$200,000 (probably just from Bulldog and Pitkin) to be invested in an addition to the \$300,000 loan previously made to Scottish Holdings (Romie, we need to discuss this structure when I am there on the 5th), for further advance as equity to Scottish Annuity, making its total capitalization \$500,000.

We understand that Scottish Annuity is required to maintain the US \$240,000 minimum capital in the form of cash equivalents, and that portion of the capital is not available to use as working capital to finance the current capital investment and expense requirements. The remaining \$60,000 of initial capital has been exhausted for computer equipment, administration fees, legal and accounting fees, and other expenditures. We further understand that the company expects to be revenue positive by the end of this year, based on current indications of interest in the company's annuity product, and that the additional investment is expected to be a more than sufficient amount of working capital.

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21-MAR-1995 19:47

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P.001

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44-38861-211

FBI - NEW YORK 4/11/95 10:15a

A new Cayman fund, Maverick Growth and Income Fund is in the process of formation. This fund will hold the Boston Chicken investments through a special purpose Cayman subsidiary, B & C Holdings, Ltd. In the event the new fund is not ready at the time funding is required for the B & C investment, it may be necessary to contribute the \$3.5 million direct to B & C for equity and contribute the B & C equity to the new fund at a later date.

In conjunction with the formation of the new fund, Maverick Income Fund, Ltd. will liquidate all of its investments and distribute the net proceeds to its shareholders. We recommend that the shareholders contribute these funds to the new Growth and Income Fund.

More details will be available later. If the Trustees concur in these recommendations, we recommend that steps be taken to ensure the availability of funds under the current margin arrangements with Lehman and First Boston. We understand that you will contact Lou Schaufele at Lehman regarding funding arrangements.

With respect to timing, we understand that the Scottish Annuity funds are required to be in before March 31, in order that the statutory accounting requirements can be met and bills can be paid on time. The B & C transaction will also be required to be funded by the end of March.

CC. Keith King

*McL*  
*Sham Bolton*

Maverick Capital • 8080 North Central Expressway • Suite 1300 • LB-31 • Dallas, Texas 75206-1895

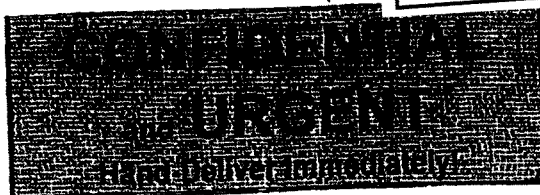
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P.082

CONFIDENTIAL  
PSI00121778

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Subcommittee on Investigations



## FAX TRANSMITTAL

**Maverick**

TO: Shaun Cairns FROM: Mike French  
COMPANY: Wychwood Trust Limited PHONE: 214 [REDACTED]  
PHONE: 44 1624 824011 FAX: 214 [REDACTED]  
FAX: 44 1624 824 070 DATE: July 10, 1995  
NUMBER OF PAGES (including cover): TIME: 3:50 PM

### COMMENTS:

Dear Shaun:

*500,000. 2,480,000. 1,240,000. 700,000.*  
*Plaquesmine. Schiefley. Calls.*

I recommend that you immediately contact Lehman Brothers (Lou Schaufele 214 720 9471) regarding the acquisition of two year call options to purchase Sterling Software at the market. These would be acquired by the Plaquesmine Trust and another trust established by a Trust at Lorne House, or, if Keith is willing to establish two new trusts that parallel the Bessie and Tyler trusts he set up last year with Lorne House, those new trusts could be the acquirer.

In either case, the actual transaction would be done through a corporate subsidiary of the trusts. Lorne House will assist in arranging the financing

This transaction, if you as trustee believe it is beneficial, would need to be effected very quickly. I will call you when I reach the office in the morning. As with my other fax, I suggest that you dispose of this one as there will be adequate subsequent documentation of any transactions.

Please show a copy of this to Keith.

Also, I am looking forward to receiving your proposals regarding the Nevis bank.

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PSI00137227

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## FACSIMILE COVER PAGE

TO: Barbara Rhodes From: Michelle Boucher  
COMPANY: Lorne House Fax: 809-  
FAX: 011-44-1 Tel: 809-  
DATE: December 14th, 1995

We are transmitting 2 page(s). Please contact the undersigned if there is a problem with the transmission.

Dear Barbara,

Please find attached wire instructions for the following entities:

Scottish Holdings, Ltd  
The Irish Trust Company (Cayman) Ltd.

Please arrange for the following amounts to be wired to Scottish Holdings on behalf of Bessie & Tyler. I suggest you use funds from Bulldog and Pitkin entities, preferably Morehouse and Roaring Fork respectively, as they have previously advanced money and Janak is working on a revolving loan agreement between them. However, having said that, please advance funds from whichever entities have it available.

Bessie	\$2,133.33	being payment for 21,333.33 shares @ \$0.10 per share
Tyler	\$1,066.67	being payment for 10,666.67 shares @ \$0.10 per share

I expect the Protectorates to give a recommendation to advance some funds to the Irish Trust Company/ Irish Holdings in the near future.

Please let me know the value date of the funds transfer so that I may expect it.

Kind regards,

Michelle Boucher  
Manager, Finance & Administration  
(unsigned as sent via personal computer)

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PS100118176

## WIRE INSTRUCTIONS:

— = Redacted by the Permanent  
Subcommittee on Investigations

Scottish Holdings Ltd

Morgan Guaranty Trust Co. of New York

ABA: 021000238

A/C: Lazard Brothers &amp; Co. Ltd.

A/C No: [REDACTED]

Sub A/C: Queensgate Bank &amp; Trust Company Ltd.

Sub A/C No: [REDACTED]

For Further Credit: Scottish Holdings Ltd, Acct No: [REDACTED]

The Irish Trust Company (Cayman) Ltd

Morgan Guaranty Trust Co. of New York

ABA: 021000238

A/C: Lazard Brothers &amp; Co. Ltd.

A/C No: [REDACTED]

Sub A/C: Queensgate Bank &amp; Trust Company Ltd.

Sub A/C No: [REDACTED]

For Further Credit: The Irish Trust Company, Acct No: [REDACTED]

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10TH FLOOR

F-595 T-395 P-001

FEB 21 '96 10:05

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Subcommittee on Investigations

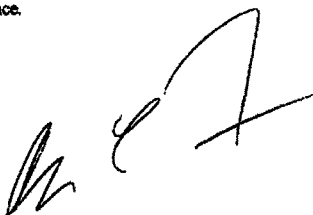
**FAX TRANSMITTAL****Maverick**

TO: **Ronald Buchanan** FROM: **Mike French**  
COMPANY: **Lorne House Trust** PHONE: 214-  
PHONE: **44 624 823 579** FAX: **214**  
FAX: **44 624 822 952** DATE: **February 21, 1996**  
NUMBER OF PAGES (including cover): **1** TIME: **10:03 AM**

**COMMENTS:**

Michelle has already been in touch with your office regarding the need for two new corporate subsidiaries for each of the Bessie and Tyler trusts (total of four corporations), plus one for the Chisolm trust. These must be in place in order to do the annuity assignments which we would like to finalize by tomorrow.

In order to do this we must have the names of these companies in order to complete the documentation. Please furnish this information at once.



Spoke to m.B.  
she is to advise  
as to whether we  
need a 2nd T. Sub.

A.  
21.2.96

Maverick Capital • 8080 North Central Expressway • Suite 1300 • LB-31 • Dallas, Texas 75206-1895

21-FEB-1996 17:00

2148918245

P.001

CONFIDENTIAL  
PSI00137770

FACSIMILE COVER PAGE

We are transmitting 3 page(s). Please contact the undersigned if there is a problem with the transmission.

re: Fugue Limited

The protectorates committee recommends the acquisition of a piece of artwork for Fugue Limited, as follows:

The painting is at Sotheby's U.K. for sale for GBP 155,500. Should you proceed with the acquisition, please make reference to invoice # LN64060018. I have attached a description of the painting which is named 'Noon Day Rest'.

The protectorates also recommend shipping the painting to 8080 N. Central Expressway, Suite 1300, Dallas, Texas, using Fritz Companies to handle the shipment. The contact name for Fritz is as follows:

Jim Webster  
Assistant Import Manager  
Fritz Companies Inc. —  
8920 Royal Lane  
Irving Texas 75063 981  
tel: 214-9[REDACTED]  
fax: 214-9[REDACTED]

The protectorates also recommend that the painting be insured. Please arrange for appropriate insurance to be placed on the artwork. Kindly advise me as to the process of insuring the artwork, and which company has been selected as the insurer.

Finally, the protectorates recommend selling part of Fugue's Treasury Bill that is scheduled to mature on August 1st, 1996, in order to finance the acquisition.

Please address this purchase as soon as possible, if you have any questions, please contact me directly.

Kind regards,

Michelle Boucher  
Michelle Boucher

0121 - [REDACTED]  
(NCC: 10-11-1988)

CONFIDENTIAL  
PSI00119258



**THE TRUST COMMITTEE OF LORNE HOUSE TRUST LIMITED**

**TRUSTEES OF THE BESSIE TRUST**

**RESOLUTION IN WRITING**


We the undersigned, being all the members of the above-mentioned Committee, pursuant to the powers vested in us by the Articles of Association of Lorne House Trust Limited in its capacity as the Trustee of the above mentioned Trust, do hereby resolve:-

1. **THAT** the trust, in accordance with the wishes of the Committee of Trust Protectors, purchase the "Noon Day Rest" painting from Sotheby's at a cost of £155,500.00 and that it be delivered to at 8080 North Central Expressway, Suite 1300, Dallas, Texas.


Dated 29th July 1996

Committee Members

  
.....

  
.....

  
.....

  
.....



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13TH FLOOR

F-756 T-878 P-001

NOV 25 '96 15:48

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Subcommittee on Investigations

**FAX TRANSMITTAL****Maverick**

TO: **Ronald Buchanan** FROM: **Mike French**  
COMPANY: **Lorne House Trust** PHONE: **214 [REDACTED]**  
PHONE: **44 624 823 579** FAX: **214 [REDACTED]**  
FAX: **44 624 822 952** DATE: **November 25, 1996**  
NUMBER OF PAGES (including cover): **3** TIME: **10:17 AM**

**COMMENTS:**Re: **Bessie Trust**

The undersigned Protector of The Bessie Trust has consulted with the first-named US beneficiary of the Trust regarding the proposed purchase by the Trust of certain works of art described on the attached page. It has been represented by such person that no current beneficiary affiliated with such person has any immediate foreseeable need for the funds required to acquire such works of art or any investment returns on such funds.

Accordingly, the Protectors do not object to the purchase of such works of art by the Trust. Due to the holiday here in the US, Ms. Robertson is not available to sign this fax, but I am advised that she approves.



Maverick Capital • 8080 North Central Expressway • Suite 1300 • LB-31 • Dallas, Texas 75206-1895

25-NOV-1996 21:42

2148918245

P.001

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PSI00121101



FROM : (809) 549-2519

PHONE NO. :

Dec. 16 1996 05:48PM P1

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Subcommittee on Investigations

## FACSIMILE COVER PAGE

TO: Barbara Wade From: Michelle Boucher  
FAX: 011-44- [REDACTED] Fax: 809- [REDACTED]  
DATE: December 16th, 1996 Tel: 809- [REDACTED]

We are transmitting \_\_\_\_ page(s). Please contact the undersigned if there is a problem with the transmission.

Dear Barbara,

Little Woody/ Roaring Fork

The protectorate committee recommends that Little Woody Limited and Roaring Fork Limited redeem all of their holdings in Maverick Income Fund LDC, and invest the proceeds directly into Maverick Fund Ltd.

If the trustees agree to proceed with this recommendation, kindly arrange for the appropriate redemption request and subscription documents to be completed.

Have a great Holiday Season!

Kind regards,

  
Michelle Boucher

CONFIDENTIAL  
PSI00121027

Lorne House Trust Limited,  
Lorne House,  
Castletown,  
Isle of Man IM9 1AZ.

January 5th, 1998.

Gentlemen,

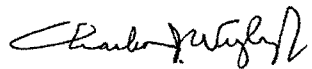
**Restructuring of Scottish Holdings, Ltd.**

We understand that you are concerned that the following documents which we are asking you to sign as Trustees of the Tyler Trust appear to be more favourable to the beneficiaries of the South Madison Trust than to the beneficiaries of the Tyler Trust.

It is nevertheless our wish that you should sign them on behalf of the Tyler Trust and we hereby indemnify you against any costs of any nature and to hold you harmless with respect to any consequences of your signing the documents.



Shari Robertson  
Disinterested Member,  
Committee of Protectors.



Charles J. Wyly, Jr.  
Settlor.

Give to safe in Tyler Trust.

TOTAL P.002

CONFIDENTIAL  
PSI00131346

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Subcommittee on Investigations

## FAX TRANSMITTAL

To: <b>David Harris</b>	From: <b>Shari Robertson</b>
<b>Ken Jones</b>	<b>Mike French</b>
Company: <b>Aundyr Trust Company Ltd.</b>	Phone: <b>214</b> [REDACTED]
Phone: <b>011 44</b> [REDACTED]	Fax: <b>214</b> [REDACTED]
Fax: <b>011 44 1</b> [REDACTED]	Date: <b>November 19, 1998</b>
Number of pages: <b>1</b>	Time: <b>9:31 AM</b>

Re: Green Mountain/GMP

Attached is a schedule showing the anticipated funding for the prior approved GMP Holdings investment. I will be out next week, final confirmation of the amounts and dates will be coming from either Michelle Boucher or Evan Wyly. If you need further confirmation of my approval, leave me a voice mail and I will call. The cash call in total is \$10,000,000. (The protectors are recommending leaving the \$10,000,000 loan to Security Capital outstanding at this time, more on that later.) At this time, I do not know whether Maverick is going to invest in this round. If Maverick does invest the % of GMP's Cash call is 66.71328%, if not the % is 86.71328%. I have attached schedules outlining these two cash calls.

The protectors' recommendation is to fund GMP's % as follows:

Roaring Fork	\$750,000
Dortmund	\$302,080.
Locke	\$5,135,920.
East Carroll	483,328.

And if Maverick is out:

Tensas	\$1,000,000.
W. Carroll	\$1,000,000.

Michelle will provide you with wiring instructions. It is my understanding that good funds are needed at Green Mountain Energy on 11/30/98. I think you should plan to have cash ready to wire to GMP Holdings on Tuesday/Wednesday of next week. I am in the office today and tomorrow if you have questions.



Shari Robertson  
01/11/1999 09:22 AM

To: Michelle Boucher  
Cc:  
Subject: SSW/SE Collar

I have begun discussions with Lou to collapse the SSWSE collars. As I recall Greenbriar and Samia (I don't know the breakdown) sold 100,000 SE at \$38, \$40, & \$42 for a total of 300,000 shares. These entities are now short the delivery of these shares for the collapse of the collar.


Moberly needs to exercise 300,000 shares of SE and sell the shares to Greenbriar/Samia prior to 2/9/98. I have put a call into Al Hoover at SE to get clearance on this transaction.



Lou assures me that Lehman's is short all of the stock within the collars and as long as will collapse the collar at least one day prior to 2/9 we can come to terms on what the sale price of the stock is and there will be no trading in the marketplace.

Confidential  
SEC\_ED00046560

PSI\_ED00046560

— = Redacted by the Permanent  
Subcommittee on Investigations

 Shari Robertson  
03/16/1999 07:56 AM

To: mboucher@  
cc: Evan Wyty/Maverick@  
Subject: Maverick Fund / Maverick Fund II

The Protectors committee would like to recommend that E. Carroll (Let me know if there's a better selection) redeem \$2,000,000 of Maverick Fund, Ltd. and invest the proceeds in Maverick Levered Fund, Ltd. effective as of 4/1/99. If the trustees agree with this decision, please inform Amy Castillo of this redemption/investment. Please do appropriate approval at the the FUND level to waive 30 days notice.

Confidential  
SEC\_ED00069938

PSI\_ED00069938

**FAX TRANSMITTAL**

— = Redacted by the Permanent  
Subcommittee on Investigations

TO: **Michelle Boucher**FROM: **Shari Robertson** *Shari Robertson*

COMPANY:

PHONE: 214- [REDACTED]

PHONE: 345- [REDACTED]

FAX: 214- [REDACTED]

FAX: 345- [REDACTED]

DATE: April 21, 1999

NUMBER OF PAGES (including cover): 19

TIME: 10:00am

As in the past, the protectorate committee recommends that Tyler Trust (Soulieana Limited) consider the purchase of collectibles and artwork. I am attaching invoices from Marguerite Theresa Green and Associates, Inc. totalling \$224,298.26.

I am obtaining insurance on behalf of Soulieana, as requested. Pictures of these collectibles will come by courier with the original invoices.

If possible, could these funds be wired **AS SOON AS POSSIBLE** since vendors need to be paid immediately. Wiring instructions are: First National Bank of Park Cities, Dallas TX, ABA 111014325, for the account of Marguerite Theresa Green and Associates, Inc., Acct. No. [REDACTED]

Thank you.

— = Redacted by the Permanent  
Subcommittee on Investigations



Michelle Boucher  
<mboucher@>

To: "charles.wyly@>" <charles.wyly@>, Evan  
wyly, Shan Robertson/Maverick@>

cc:

Subject: michael's options

12/23/1999 06:37 AM

Please respond to  
"mboucher@>

Lou Schaufele called today, and if we want to liquidate US Government  
Agencies for CW entities - (Quayle Limited) for the option exercise then he  
would like to liquidate these today.

He is afraid that if we wait until next week, we may (less than 10% chance)  
not be able to sell them as they are so close to maturity. If we do  
liquidate, the funds will sit on the money market account and will still  
earn something.

Let me know how you feel about this - I need to get back with Lou today.

Thanks!

Confidential  
SEC\_ED00069994

PSI\_ED00069994

666

From: Michelle Boucher <mboucher@[REDACTED]>  
Sent: Tuesday, January 11, 2000 4:13 PM  
To: Ken Jones (E-mail) <kennethj@[REDACTED]>  
Cc: Shari Robertson  
Subject: michaels stores

[REDACTED] = Redacted by the Permanent  
Subcommittee on Investigations

---

Lehmans confirmed selling 175K of shares at \$31.44

The protectors recommend that you make arrangements for a further exercise and sale of another tranche of 200,000 options with the same price parameters of \$30 or better and maintain the same pro-rata split between Yurta Faf and Dortmund.

Any questions, please call.  
Michelle

**MAV007819**



From: Michelle Boucher <mboucher@[REDACTED]>  
Sent: Tuesday, February 8, 2000 12:43 PM  
To: Francis Webb (E-mail) <fwebb@[REDACTED]>  
Cc: Shari Robertson  
Subject: Devotion Limited

---

[REDACTED] = Redacted by the Permanent  
Subcommittee on Investigations

Francis,

Further to our conversation yesterday, and my subsequent email. Please advise concerning any progress you have made on the Denison University donation and update me on the time frame within which you believe the money will move.

I have also been advised today that the protectors recommend that donations also be made to an organization called "A Grassroots Aspen Experience" as follows:

Year 2000 \$60,000  
Year 2001 \$40,000

I will send you contact information shortly. Hopefully you can make the amendments to the deed of inclusion for La Fourche trust to include both these organization in the same minutes and deed.

I look forward to hearing from you shortly.

Michelle

**MAV007892**

— = Redacted by the Permanent  
Subcommittee on Investigations

Shari Robertson  
02/14/2000 06:20 AM

To: kennethj@ [REDACTED] davidh@ [REDACTED]  
cc: mboucher@ [REDACTED] Mike French/Maverick@ [REDACTED]  
Subject: Purchase of Bonds

The protectors recommend the purchase of \$5 million Amazon Bonds from Morgan Stanley. As we understand this is a new issue. These bonds are available for purchase thru Morgan Stanley and the contact is Elisha Kelly at 212 [REDACTED] I think settlement would be tomorrow. I talked to Michelle this morning and she suggested that there should be adequate cash in Yurta Faf. Call me.

\*\*\*\*\*

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\*\*\*\*\*

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SEC\_ED00072046

PSI\_ED00072046

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**From:** Keeley Hennington  
**Sent:** Wednesday, February 16, 2000 2:03 PM  
**To:** Andrea Westbrook  
**Subject:** RE:

Can you please get me the instructions to wire to the Little Woody Managment Trust bank account and the Jourdan Way Managment Trust so I can pass them on to Michelle. Thanks  
----- Forwarded by Keeley Hennington/htst on 02/16/2000  
03:49 PM -----

Michelle Boucher <mboucher@ [REDACTED]> on 02/16/2000 03:32:08 PM Please respond to  
"mboucher@ [REDACTED]"  
To: "'khennington@ [REDACTED]'"  
cc:

Subject: RE:

Okay, just send me wire instructions as soon as you have them and we'll move the money then.  
Michelle

-----Original Message-----

From: khennington@ [REDACTED]  
Sent: Wednesday, February 16, 2000 4:45 PM  
To: mboucher@ [REDACTED]  
Subject: RE:

That sounds great - I am shooting for closing March 3rd. so we would just need to have money in LLC at that time. Thanks

Michelle Boucher <mboucher@ [REDACTED]> on 02/16/2000 02:23:58 PM

Please respond to "mboucher@ [REDACTED]"

To: "'khennington@ [REDACTED]'"  
cc:

Subject: RE:

I will move the cash to IOM this week from Lehman's. Then I could get it to you on a next day basis, but would prefer 2-3 days warning, especially given the trustees I have to deal with on this one - they are pretty good, but not always as quick as the other firm.

-----Original Message-----

From: khennington@ [REDACTED]  
Sent: Wednesday, February 16, 2000 3:27 PM  
To: mboucher@ [REDACTED]

Confidential  
SEC\_ED00000319

PSI\_ED00000319

670

Subject:

I am back to looking at the Little Woody and Jourdan Way sales since there is not enough other stuff going on - I think the only thing left for you is to fund the Trust before the sale. Is that money readily available and how much lead time do you need? I still think we are a couple of weeks out, but thought I would check.

THanks  
Keeley

Confidential  
SEC\_ED00000320

PSI\_ED00000320

From: Michelle Boucher <mboucher@ [REDACTED]>  
Sent: Monday, March 6, 2000 1:47 PM  
To: Ken Jones (E-mail) <kennethj@ [REDACTED]>  
Cc: Shari Robertson  
Subject: Greenmountain

[REDACTED] = Redacted by the Permanent  
Subcommittee on Investigations

As per the recent cash flow projections, the protectors recommend that you make arrangements for the \$6.5M funding for March to be paid over to Green Funding 1 at your earliest convenience.

I suggest that you make arrangements to utilize funds on hand at Moberly Limited with Bank of Bermuda, as well as those that were realized on the recent SSW swap reset. Money will need to move to Green Funding 1 no later than March 9th.

We are arranging for the documentation to be prepared and executed and will forward the same to you once received.

If you have any questions, please call.

**MAV007958**

— = Redacted by the Permanent  
Subcommittee on Investigations



Michelle Boucher

To: Shari Robertson/M

cc:

Subject: RE: Edinburgh Fund

02/09/2000 09:23 AM

Please respond to

"mboucher@"

I assume he's talking about bringing it up to \$20M level. At 12/31 the net assets were approx \$16.9M, so I have \$3.1M available due to the Michaels sales. Since the cash is in Bessie, and needs to be used to buy Woody Creek Ranch Limited from Devotion, I propose that we transfer what we need to over to Devotion now, and then settle the intercompany as part of the purchase price of Woody Creek Ranch Limited when we have all the cash available (ie. when we are done the Michaels sales.)

I'll put something together for you on cash flow and confirm with Juanell on the \$20M, - but will do it this afternoon.

I guess that if they really want us to move money asap, and put it in for a 2/1 subscription we can - it's all the same pot at this point - no outsiders so I don't really have a problem doing that, provided the trustees with agree to it.

Let me know what you think.  
Michelle

-----Original Message-----

From: Shari\_Robertson/Maverick  
[SMTP:Shari\_Robertson/Maverick]  
Sent: Wednesday, February 09, 2000 12:26 PM  
To: mboucher@  
Subject: Edinburgh Fund

I assume we're actually talking about 3/1. What do you think? Can we raise cash that quickly? Do you think he's talking adding enough to bring the value of the fund up to \$20 million or \$20 million - initial investment?

\*\*\*\*\*  
\*\*\*\*\*  
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\*\*\*\*\*  
\*\*\*\*\*

----- Forwarded by Shari Robertson/Maverick on 02/09/2000 11:22 AM -----

Confidential  
SEC\_ED00072001

PSI\_ED00072001

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Subcommittee on Investigations

Juanell Lance

Shari

02/09/2000  
10:29 AM

To: Jason Elliott [REDACTED],  
Robertson/Maverick [REDACTED]  
cc:  
Subject: Edinburgh Fund

At Sam's direction I sent an e-mail to Elaine regarding back-up for Jana. She has been out ill for a couple of days, so Sam has not received the daily report. Jana is trying to do it from home today, but that is not the solution. So Sam has asked Elaine to let him know who Jana's backup is. Jason, although you were copied on the e-mail, Sam is not asking you to do anything. He just wanted you to know he wants Elaine to treat Edinburgh like the business venture it is.

Further on Edinburgh, Sam wants additional cash in Edinburgh so that it is up to \$20 million by the anniversary date, February 22nd. Since it will take time, he wanted you to know now what he expects.

Thanks.

Juanell

Confidential  
SEC\_ED00072002

PSI\_ED00072002

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**From:** Michelle Boucher  
**Sent:** Thursday, May 31, 2001 11:51 AM  
**To:** Crittenden, Michele  
**Subject:** FW: East Carroll, Locke re: Ranger / Precept

FYI

-----Original Message-----

**From:** Michelle Boucher  
**Sent:** Thursday, May 31, 2001 8:53 AM  
**To:** 'AnnaB@'; 'melanieq@';  
**Cc:** Dawn Cummings  
**Subject:** RE: East Carroll, Locke re: Ranger / Precept

East Carroll should go to Ranger Fund LLC.  
Locke's money should go to Ranger Fund, Ltd (note the difference between these two entities - one is Ranger Fund LLC, one is Ranger Fund Ltd.) Wire instructions as per the subscription documents are as follows. Lehman's should wire money directly from Lehman Brothers to the Ranger entities TODAY and not go via Bank of Bermuda because the money needs to be here to make investments for value tomorrow - if it goes to BOB first we won't see it until Monday at the earliest. Please contact Lehman asap to ensure the money is going to the right accounts.

RANGER FUND, LLC  
Wire to: IBJ Whitehall Bank & Trust, New York, NY  
ABA Number: 026 007 825  
or CHIPS: 782  
Beneficiary Bank: Queensgate Bank & Trust Company Ltd.  
Account Number: [REDACTED]  
Benefit of: Ranger Fund, L.L.C.  
Account Number: [REDACTED]  
For Benefit of : (East Carroll)

RANGER FUND LTD  
Wire to: IBJ Whitehall Bank & Trust, New York, NY  
ABA Number: 026 007 825  
or CHIPS: 782  
Beneficiary Bank: Queensgate Bank & Trust Company Ltd.  
Account Number: [REDACTED]  
Benefit of: Ranger Fund, Ltd.  
Account Number: [REDACTED]  
For Benefit of : (Locke Limited)  
  
Michelle



— = Redacted by the Permanent  
Subcommittee on Investigations

Shari Robertson  
06/16/2000 03:01 PM

To: mboucher@ [REDACTED] y  
cc:  
Subject: Gift - \$100,000

The protector's committee would like to make a recommendation to make a gift of \$100,000 to the Humble Legal Foundation from LaFourche Trust. I will be faxing information from this "not for profit" organization as soon as I get it. I assume that the trust deed will need to be amended. The contact at the foundation is Steve Sheckman (sp?). His phone number is 707 [REDACTED]. The gift will be wire to the foundation. Wiring instructions are Coast Central Credit Union, ABA # 321-1872248, Account # [REDACTED]. The taxpayer id # is [REDACTED]. Since all of this information was relayed thru a voice mail I have asked Steve to follow-up with all of the information in writing. I've also asked for proof that this is a charitable institution. Ultimately this gift will go to "save the Redwood trees in N. California". I think the gift needs to be made rather quickly because there are immediate needs. Confirm that you rec'd this.

\*\*\*\*\*  
\*\*\*\*\*  
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\*\*\*\*\*  
\*\*\*\*\*

Confidential  
SEC\_ED00044296

PSI\_ED00044296

From: Shari Robertson  
 Sent: Thursday, June 22, 2000 5:16 PM  
 To: Mike French  
 Subject: roaring fork / first dallas international  
 Attach: att1.htm

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fyi

\*\*\*\*\*  
 \*\*\*\*\*

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\*\*\*\*\*  
 \*\*\*\*\*

----- Forwarded by Shari Robertson/Maverick on 06/22/2000 04:12 PM -----

"Michelle Boucher" [REDACTED]  
 06/22/2000 03:03 PM

To: kennethj@[REDACTED]  
 cc: Shari Robertson/[REDACTED]; irishtst@[REDACTED]  
 Subject: roaring fork / first dallas international

The protectors recommend that the trustees invest a further \$2M into First Dallas International Limited for July 1st, 2000. Provided that the trustees agree to proceed with the investment, please contact Lara Haskins at Irish Trust to co-ordinate the investment. It is suggested that the 9/14/00 FNMA and 7/13/00 FNMA bonds be liquidated to raise funds for this investment.

- att1.htm

**MAV008079**

**SOME DIRECTIONS BY THE WYLYS**

---

"Sam and I recommend to our protectors that all the Sterling Software options be converted to CA options."

-3/10/00 memo from Charles Wyly

---

"I spoke with Sam today, he wants to proceed with selling 200,000 Michaels Stores shares from offshore...."

-9/15/00 email from Michelle Boucher

---

"Sam recommends that the trustees exercise and sell the remainder of the Michaels options...at \$40 or better."

-4/24/00 email from Evan Wyly

---

"Sam wants additional cash in Edinburgh so that it is up to \$20 million by the anniversary date, February 22nd" funded with offshore cash. "Since it will take time, he wanted you to know now what he expects."

-2/9/00 email from Juanell Lance

---

"I just spoke to Sam, and he recommends proceeding with the exercise and sale of the \$12.50 Michaels options" held by an offshore entity.

-1/10/00 email from Evan Wyly

---

"Sam wants the \$7 million funded offshore. What would the best entity be?"

-4/20/00 email from Evan Wyly

---

"SW told us to go ahead and have the trustees make the withdrawal."

-12/1/00 email from Michelle Boucher

---

"I can assure you that the settlor in [a court case regarding another of the trustee's trusts] has been far more willing to leave us in genuine control...than S. [Sam] appears to be."

-3/1/95 letter from R. Buchanan of Lorne House

---

## SOME DIRECTIONS BY THE WYLYS

---

Informing Evan about a planned real estate purchase: "Of the total cost, 98% will be funded from offshore."

-7/13/00 email from Keeley Hennington

---

Informing Charles that an IOM trust has not made a required payment: "I...trust that you agree the trustees should proceed with their remittances. Kindly confirm this back to me, and I will advise."

-5/17/00 email from Michelle Boucher

---

"I just received a note from Mr. Wyly requesting that a couple of the invoices be charged to Soulieana."

-6/20/02 email from Wyly family office employee

---

"I have been with Charles for the last 1 1/2 hours.... Moberly is going to make a paid in capital contribution...."

-1/31/03 email from Keeley Hennington

---

"I have estimated that the protectors should recommend an additional investment of \$3 million into First Dallas International." Charles Wyly's handwritten note: "Yes."

-1/31/02 email from Michelle Boucher

---

"I received a fax from Charles tonight indicating that Sam has canceled his request to exercise and sell the offshore options at \$40 or better - please confirm."

-4/26/00 email from Michelle Boucher

---

"Sam signed a letter authorizing Green Funding I to loan greenmountain.com \$22,000,000 under a non-recourse loan.... [A]n offshore entity will loan the funds to Green Funding I under a similar non-recourse loan..."

-5/3/99 email from Elaine Spang

---

Proposing a Sterling Software transaction: "Sam, call me when you have time to discuss.... The #'s for Bulldog/Pitkin would be similar."

-8/22/95 fax from Lou Schaufele

## SOME DIRECTIONS BY THE WYLYS

---

Charles is asked whether "to liquidate US Government [bonds] for CW entities - (Quayle Limited).... Let me know how you feel about this...."

-12/23/99 email from Michelle Boucher

---

Memo on pledging the family's assets, including offshore dollars: "Additionally, Charles' Family agrees to not pull out funds in excess of \$1,000,000 per quarter without a six month notice."

-6/6/96 memo from Sam Wyly

---

"Pursuant to Mr. Wyly's telephone conversation, please invoice future purchases of collectibles [to] Souliana Limited...."

-1/21/97 fax from Wyly family office employee

---

"We understand that you are concerned that the following documents which we are asking you to sign as Trustees of the Tyler Turst appear to be more favourable to the beneficiaries of the South Madison Trust than to the beneficiaries of the Tyler Trust. It is nevertheless our wish that you should sign them...."

-1/5/98 letter from Charles Wyly and Sharyl Robertson

---

"The reason for 2 invoices [one to Audubon, one to Sam] on the Griffing [painting] is to allow you [Sam] to choose the one you wish to use in taking title."

-8/4/99 letter from Wind River Gallery

---

"Sam still has a contract pending on one property. It is up to him to determine whether he wants to counter."

-8/19/99 email from Sharyl Robertson

---

Regarding a Sterling Software swap by an offshore entity: "I expect you will hear this from Evan.... [H]e is taking care of discussing terms and size with you."

-10/6/99 email from Michelle Boucher

---

"In my discussions with Charles last week, he said due to the option sale earlier this month that the sale of the properties was not as time sensitive."

-10/11/99 email from Keeley Hennington

## SOME DIRECTIONS BY THE WYLYS

---

Regarding a "CW real estate" purchase using offshore funds: "Shari - Do you think we should sit down with Charles again and make sure he wants to go forward with everything...?"

-10/13/99 email from Keeley Hennington

---

Regarding "CW" on Sterling Software stock held offshore: "He's not ready to decide what he's doing on SSW options. Will let us know."

-3/2/00 email from Sheryl Robertson

---

"Charles called and wanted to sell 100,000 shares of MIKE [using Quayle] at \$42.00 or better today and asked me to call Lehman."

-10/3/01 email from Keeley Hennington

---

"Sam recommends fulfilling the Green Mountain request for \$7 million for April" using offshore funds.

-3/29/00 email from Evan Wyly

---

"Charles is looking at establishing a breeding and equestrian training facility with Emily's involvement.... Keeley and I are consulting Rodney to see if we can use...foreign assets for the cash injection...."

-10/16/00 memo from Michelle Boucher

---

Summarizing a meeting with Charles: "Nothing was directly discussed regarding construction activities on Charles and Dee's house in Aspen. If they decide to proceed, we will recommend that an IOM company acquire the property, to provide funds for the construction project."

-10/16/00 memo from Michelle Boucher

---

Regarding plans to liquidate certain offshore holdings: "I have sent a note to Sam re: the deal.... I do not want to proceed without his ok."

-7/23/01 email from Keeley Hennington

---

"[W]e would prefer to move these off Soulieana Limited inventory.... Please let me know if you agree with this proposal and we will move forward." Charles writes, "OK."

-12/4/00 memo from Keeley Hennington

---

## SOME DIRECTIONS BY THE WYLYS

---

Regarding prepaid forward contract involving Devotion: "Well, Evan just called and said Sam has decided to not go forward with the forward sale or the call spread. He said he was sorry for wasting everyone's time...."

-10/9/01 email from Keeley Hennington

---

"Shari...thought that you and Sam were looking at an exercise and hold scenario for the Michaels options, and that I should start looking for cash flow to fund the exercise of the offshore piece."

-1/10/00 email from Michelle Boucher

---

Regarding sale of property to offshore entities: "I agree that we should be closed by the end of month unless Charles wants to delay."

-10/11/99 email from Keeley Hennington

---

"I was talking to Charles yesterday.... He was talking about use of off-shore cash...."

-2/28/01 email from Keeley Hennington

---

## **MEMORANDUM**

---

To: **Michelle Boucher**                      cc: **Sam Wylly**  
**Shari Robertson**  
From: **Charles Wylly**  
Date: **March 10, 2000**  
Re: **SSW Options**

Sam and I recommend to our protectors that all the Sterling Software options be converted to CA options.

CONFIDENTIAL  
SECI00023428  
PSI00035295



Copy fyi - I forgot to copy you initially.  
Michelle

— = Redacted by the Permanent  
Subcommittee on Investigations

----- Original Message -----

**From:** Michelle Boucher

**To:** Shari Robertson/Maverick%MAVERICKCAP@ [REDACTED]

**Sent:** Friday, September 15, 2000 12:11 PM

**Subject:** michaels sales offshore

I spoke to Sam today, he wants us to proceed with selling 200,000 Michaels Stores shares from offshore to aid in raising funds for Ranger/Precept projects.

I would like to recommend selling 175,000 held by East Carroll, and 25,000 of the shares held by East Baton Rouge

I confirmed with him that there is nothing going on with the company that should preclude us from being in the market at this time. He wants Lou to slowly acquire without impacting the market.

Please confirm you are comfortable with me going forward to the Trustees.  
Michelle

Confidential  
SEC\_ED00046906

PSI\_ED00046906

— = Redacted by the Permanent  
Subcommittee on Investigations

Evan Wyly  
04/24/2000 01:37 PM

To: mboucher@ [REDACTED]  
cc: Shari Robertson/Maverick@ [REDACTED], Sam\_Wyly@ [REDACTED]  
Subject: Michaels Shares

Sam recommends that the trustees exercise and sell the remainder of the Michaels options that expire this summer. Sell at \$40 or better.

Confidential  
SEC\_ED00043549

PSI\_ED00043549

From: Michelle Boucher <mboucher@[REDACTED]>  
 Sent: Wednesday, February 9, 2000 12:24 PM  
 To: Shari Robertson  
 Subject: RE: Edinburgh Fund

[REDACTED] = Redacted by the Permanent  
 Subcommittee on Investigations

I assume he's talking about bringing it up to \$20M level. At 12/31 the net assets were approx \$16.9M, so I have \$3.1M available due to the Michaels sales. Since the cash is in Bessie, and needs to be used to buy Woody Creek Ranch Limited from Devotion, I propose that we transfer what we need to over to Devotion now, and then settle the intercompany as part of the purchase price of Woody Creek Ranch Limited when we have all the cash available (ie. when we are done the Michaels sales.)

I'll put something together for you on cash flow and confirm with Juanell on the \$20M, - [REDACTED], but will do it this afternoon.

I guess that if they really want us to move money asap, and put it in for a 2/1 subscription we can - it's all the same pot at this point - no outsiders so I don't really have a problem doing that, provided the trustees with agree to it.

Let me know what you think.  
 Michelle

-----Original Message-----

From: Shari Robertson/Maverick%MAVERICKCAP@[REDACTED]  
 Sent: Wednesday, February 09, 2000 12:26 PM  
 To: mboucher@[REDACTED]  
 Subject: Edinburgh Fund

I assume we're actually talking about 3/1. What do you think? Can we raise cash that quickly? Do you think he's talking adding enough to bring the value of the fund up to \$20 million or \$20 million - initial investment?

\*\*\*\*\*  
 \*\*\*\*\*

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**MAV007897**

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\*\*\*\*\*  
\*\*\*\*\*

----- Forwarded by Shari Robertson/Maverick on 02/09/2000 11:22 AM -----

Juanell Lance

— = Redacted by the Permanent  
Subcommittee on Investigations

To: Jason Elliott/htst@  
Shari 02/09/2000 10:29 AM  
Robertson/Maverick@  
cc:  
Subject: Edinburgh Fund

At Sam's direction I sent an e-mail to Elaine regarding back-up for Jana. She has been out ill for a couple of days, so Sam has not received the daily report. Jana is trying to do it from home today, but that is not the solution. So Sam has asked Elaine to let him know who Jana's backup is. Jason, although you were copied on the e-mail, Sam is not asking you to do anything. He just wanted you to know he wants Elaine to treat Edinburgh like the business venture it is.

Further on Edinburgh, Sam wants additional cash in Edinburgh so that it is up to \$20 million by the anniversary date, February 22nd. Since it will take time, he wanted you to know now what he expects.

Thanks.

Juanell

MAV007898

— = Redacted by the Permanent  
Subcommittee on Investigations

Evan Wyly  
01/10/2000 02:45 PM

To: "mboucher@  
cc: Shari Robertson/Maverick  
Subject: RE: trustee meeting - Michaels

I just spoke to Sam, and he recommends proceeding with the exercise and sale of the \$12.50 Michaels options now.

Michelle Boucher



Michelle Boucher

To: evan wyly  
cc:  
Subject: RE: trustee meeting

01/10/00 02:48 PM  
Please respond to  
"mboucher@

When I spoke to Shari this morning, she thought that you and Sam were looking at an exercise and hold scenario for the Michaels options, and that I should start looking for cash flow to fund the exercise of the offshore piece (likely redemptions from offshore fund investments - Maverick, Edin, Deerfield..). She also mentioned that because of domestic liquidity issues, that you might want to look at having offshore acquire the domestic options, and exercise and hold the stock offshore. I am swamped getting year end financial information together for both Maverick and the Trusts, but was going to mention this to you with the intention that I'd put something together next week and we could discuss it while I'm in Dallas. There is also a possibility of margining some of the offshore piece instead of using all the cash. I can explore this with Lehman's if you think it's worthwhile.

-----Original Message-----

From: evan wyly  
Sent: Monday, January 10, 2000 3:54 PM  
To: Michelle Boucher  
Cc: Sam Wyly/Maverick&maverickcap  
Subject: Re: trustee meeting

That is all we will need for the meeting, thanks.  
Michaels canceled the road show. Trustees will want to exercise and sell before expiration in July.

Michelle  
Boucher

To: evan wyly  
cc:  
Subject: trustee meeting

01/10/00  
02:18 PM

Confidential  
SEC\_ED00070161

PSI\_ED00070161

— = Redacted by the Permanent Subcommittee on Investigations

Evan,

I suggest we use Atlantis Limited for your \$1Million commitment and Devotion Limited for Sam's \$7M commitment.

I will need to have 3 sets of Private Placement documents and subscription / partnership agreements sent to me as soon as they are available. I will need to send them to IOM for review/signature, so as soon as possible would be great. I will advise the trustees to expect a recommendation on this, is there any marketing materials I can send to look at in the interim? Also, do you know if Red River's tax people been made aware of the intent to have foreign investors, and if the appropriate steps being taken to incorporate the necessary language? I'd be happy to follow up with Bruce and/or Bob directly, please send me their contact info, if you'd like me to do that.

Michelle

-----Original Message-----

From: evan\_wyly@[REDACTED]  
To: Michelle Boucher <[REDACTED]>  
Cc: Shari\_Robertson/Maverick%[REDACTED]  
Date: Thursday, April 20, 2000 8:32 AM  
Subject: Re: Red River Ventures

>  
>Yes, Dortmund / Atlantis. Will it be one or both?  
>Also, Sam wants the \$7 million funded offshore. What would the best entity  
>be?  
>He also told me that he thought the next real estate investment for a Kelly  
>& Sam Aspen Office and Art Gallery (I don't know if it is called Cottonwood  
>or Wylwylworks) would be \$7 to \$8 million.

"Michelle  
Boucher" To: evan wylly  
[REDACTED] cc:  
[REDACTED] Subject: Re: Red River  
Ventures

MAV010777

SW told us to go ahead and have the trustees make this withdrawal. Kathy contacted Chad yesterday/today and although he verbally confirmed to me Wednesday that a distribution could be made in kind (this is provided for in Section 7 of the contract) and he didn't see any problem, he is apparently giving the trustees a bit of the run around - saying that he has to get it cleared due to the size involved etc.....

Just letting you know because you may hear something from MCF on this and wanted you to know it had proceeded. This was discussed at the Geneva meetings, and since the Protector powers on the 1992 trusts is limited to hiring and firing the trustee, he really should not have recourse on this. SW also indicated that this is in keeping with the severing of the relationship and he should expect it. (as you know we are also planning to acquire life ins policies with the proceeds)

The only wrinkle, which MCF may think of, and I already have is that the annuity holds shares in LDC, so I have to transfer them from the policy to the trust, from the trust to the company and then redeem from LDC and receive shares of Ltd as consideration or simultaneously acquire Ltd shares using LOA's . Hoping to do this as all non-cash transactions at December 1st. But have advised Michelle P that we may be wiring \$ around and losing it for 2 days at year end.

Will let you know how this moves forward.  
Have heard nothing of the meeting yesterday - have you?

Michelle

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SEC\_ED00044519

PSI\_ED00044519



Mike French, Esq.,  
Maverick,  
8080 N. Central Expressway,  
Dallas,  
TX 75206.

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Subcommittee on Investigations

March 1st, 1995.

Fax to: 010 1 214 [REDACTED]

**The Scottish Annuity Company (Cayman) Ltd.**

Thank you for your fax last night.

Where Keith and I are concerned with respect to the above company, we feel that we are being asked to put our heads on the block without having much compensation. The potential risk to our reputation is much the more important aspect as far as we are concerned. If it turned out that our agents in Cayman had been fraudulent, or merely negligent, and we as Managing Directors had failed to keep an careful eye on matters then our very livelihoods would be at risk.

Quite frankly, we were not impressed by Roger Phelps' idea of a quarterly report. As and when the new man is in place - and it might have been better had we been more involved in the decision to appoint him - we will hope to receive quarterly or monthly analyses of income, expenditure and cash position with comparisons against budget, the previous quarter and, in due course, the equivalent quarter in the previous year and so on. Being able to telephone you or Shawn is not the same thing, as doing so leaves no record that we made sure that we were kept abreast of affairs.

Two bits of recent news are relevant here; one well known, the other not. The notorious one is the ability of one dishonest man in a distant office to bring down a banking dynasty, Baring Brothers (my brother's in-laws), because people who should have supervised him were not asking the right questions. The unknown one is that Lorne House Trust, as a trustee, is fighting the IRS in Northern California where the IRS is contending that a corporation owned by the (foreign) trust is the mere 'alter ego'

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PSI00120863



of the Settlor, even though I can assure you that the settlor in question has been far more willing to leave us in genuine control - a fact which promises to win us the case - than S. appears to be.

On the slightly less important matter of rewards, we were glad to read that you might be able to point some significant business in our direction. Thanks for thinking of us;

R. Buchanan.

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Keeley  
Hennington@  
07/13/2000 02:52 PM

To: Evan Wyty/Maverick@  
cc: mboucher@  
Subject: Cottonwood property

Evan -

I just wanted to make you aware of the project I am working on with Kelly with regard to the Paragon building in Aspen. We have been negotiating over the past few months and are now getting close to agreeing on terms and I wanted to make sure you and Sam were aware of where we are heading. I thought if you get a chance you might mention to Sam tomorrow.

- ☐ The purchase price is \$7,775,000. We are buying first floor retail space (to be used as the gallery) and the second floor of the building. In the short term, half of the second floor will be built out for personal office space for family. The other half will be left alone and could be sold, rented or built out in the future.
- ☐
- ☐ We are using a structure very similar to the Two Mile Ranch structure. New grantor trusts will be formed owned by a new foreign corporation and the individuals who will be using the property (1%) each. Of the total cost, 98% will be funded from offshore. The management trust will contribute the money to a new Colorado LLC which will purchase the property.
- ☐
- ☐ The seller still has substantial repairs to the property some of which he is doing now and some which will be done later. For those that will be done later, funds equal to 150% of the estimated cost will be set aside at closing under our escrow agreement.
- ☐
- ☐ This property is unusual because it is zoned as a condominium. Since this is the case, we have to become part of a condo association. We are in the process of doing these documents now. Kelly has agreed to allow the seller to control the association. However, we will have approval of design of the common areas and no repairs/improvements over \$25,000 can be made by the condo association without our approval.
- ☐

I have made Kelly aware of what I feel the risks are with this property, mainly that the seller could take advantage of his control of the association to make excessive or unnecessary repairs. It is very hard since I am not there to talk with the seller, etc. to know if these concerns are valid. Kelly did say that she trusts the seller and the contractor doing the work and she was willing to let the seller control in order to close the deal.

Currently the purchase is set to close on August 15th and we are working on setting all the necessary legal entities. I know Kelly and Kristin are there watching over construction, etc. and I do not want to step on any toes. I just wanted to make sure everyone knew this was going on. Hope that's okay. Please call me if you have any questions.

Confidential  
SEC\_ED00046738

PSI\_ED00046738

**"Michelle Boucher"**

To: &lt;wyly@

cc:

Subject: contributions to the Church

05/17/00 10:00 AM

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Mr. Wyly,

I have received confirmation from the Trustees (which agrees to my records) that no payments have been made to the Church for the year 2000. I have copies of the commitment letters which indicates that each of the Red Mountain and Tyler Trust committed \$1,250,000 (\$2,500,000 total) over 5 years to commence in May 1997.

As such this year's installment of \$250,000 each (\$500,000 total) is payable currently.

The Trustees have co-ordinated this with Sam's commitment so that all the payments will be made at the same time - I believe that in prior years, payments on behalf of your commitment were made earlier in the spring.

I apologise for any confusion surrounding this, and trust that you agree the trustees should proceed with their remittances. Kindly confirm this back to me, and I will advise.

Michelle

CONFIDENTIAL  
SEC100023210  
PS100035077

**From:** Andrea Westbrook  
**Sent:** Thursday, June 20, 2002 2:50 PM  
**To:** rdegems@  
**Subject:** Charles Wyly invoices

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Subcommittee on Investigations

Jan -

I just received a note from Mr. Wyly requesting that a couple of the invoices be charged to Soulieana. The invoice numbers are 19951A and 19951C. Can these please be addressed and re-billed to Soulieana? I hate to burden you with this again, but your help is appreciated as always.

Please feel free to give me a call if you have any questions.

Thanks again,

Andrea Westbrook  
Highland Stargate  
300 Crescent Court, Suite 1000  
Dallas, TX 75201

214. phone  
214. fax

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SEC\_ED00004943

PSI\_ED00004943

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Subcommittee on Investigations

From: khennington@  
Sent: Friday, January 31, 2003 6:21 PM  
To: Schaufele, Louis J.  
Subject: Re:

Lou - I have been with Charles for the last 1 1/2 hours - I am going home for a glass of wine. Let's touch base first thing Monday and I will fill you in on the structure, etc. Moberly owns the stock of GF1 (100%). Moberly is going to make a paid in capital contribution to the company of cash. This cash will be used by GF1 to purchase the CD.

The preceding e-mail message (including any attachments) contains information that may be confidential, or constitute non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete it from your system. Use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

"Schaufele, Louis J."

To: "khennington@  
cc:  
Subject:

01/31/03 03:50 PM

What is structure of green funding? Who owns etc..  
Lou Schaufele

IMPORTANT NOTICES:

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## The Irish Trust Company (Cayman) Ltd

## FACSIMILE COVER PAGE

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cc

TO: Mary Cox - pls distribute to Donnie Miller ~~to Charles Wylly~~

cc :

CC: [REDACTED]

From: Michelle Boucher

Fax: 345- [REDACTED]

FAX: 1-214- [REDACTED]

Tel: 345- [REDACTED]

1-214- [REDACTED]

DATE: January 31, 2002

We are transmitting 2 page(s). Please contact the undersigned if there is a problem with the transmission.

Mr. Wylly,

Further to my email last night, the protectors plan to recommend a total contribution of \$3Million to First Dallas International for the February 1, 2002 subscription date.

I have attached a summary of cash flow since inception, and details of the short term cash requirement that I am aware of.

- The IOM trusts have contributed a total of \$29.2 Million to date, of which \$24.2Million was cash and \$5M was investments.
- The cash contribution has been invested as follows: \$4Million into direct investments, \$1.7Million to the Lehman Managed account and \$18 Million into First Dallas Ventures (12/31/01 balances plus January contributions of \$436K).

Based on outstanding commitments to Brazos, Trans-Europe Partners and Winston Thayer Capital Partners, as well as commitments to fund Elagent's operations through April 2002, I have estimated that the protectors should recommend an additional investment of \$3Million dollars into First Dallas International.

A recommendation to invest \$1Million was given to the trustees last night, in order to meet Elagent commitments for tomorrow, I suggest that the protectors also request the additional \$2Million as a Feb 1<sup>st</sup> subscription to provide for projected cash requirements through April 2002.

yes

to →

[Signature]

Charles

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SEC100027725  
PS100039592

Sorry, I have two more questions....

- Charles' fax also had some notes indicating that we are to sell domestic first and he has an order of:  
Evan, Kelly, Cheryl, Sam, Charles. There was a note that Donnie was finished selling domestically. Please confirm if this is  
how we should proceed?  
- I also just spoke with Lehman's, and they can rebook the 10,000 Michaels that we did today for another account (in the  
domestic system) if we want. I need to let them know in the morning.

Evan & Shari - the fax I'm referring to was copied to you too.

Thanks  
Michelle

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-----Original Message-----

From: Michelle Boucher <[REDACTED]>

To: evan\_wyly@[REDACTED]; sam\_wyly@[REDACTED]

Cc: shari\_robertson@[REDACTED]

Date: Wednesday, April 26, 2000 7:52 PM

Subject: Michaels Stores

I received a fax from Charles tonight indicating that Sam has canceled his request to exercise and sell the offshore  
options at \$40 or better - please confirm.

As per the email I forwarded earlier, Lehman's did get 10,000 shares sold today - I assume we will keep this trade  
for Dortmund and Yurta Faf's account, just hold off on any further shares, until further notice??

Please let me know asap, so I can amend the recommendation with the Trustees as early as possible.

Thanks,  
Michelle

MAV015173

Elaise Spang

05/03/99 11:28 AM

To: Keeley Henington

cc:

Subject: Green

I just learned that Sam signed a letter authorizing Green Funding I to loan greenmountain.com \$22,000,000 under a non-recourse loan. My understanding is that an offshore entity will loan the funds to Green Funding I under a similar non-recourse loan, and GF1 will turn the funds around to gm.com. For Sam, the funds will be loaned only upon a 30 day advance request from gm.com, because the offshore entity will have to liquidate a portion of its Maverick investment. The first request is for \$5,000,000 on June 1. Sam had to sign in order to get AA to sign off on last year's audit.

Are there any tax issues from:

- the structure of the loans
- the possibility that the loan may not be repaid by greenmountain.com to GF1 (Does GM1 then have taxable income from the funds received from the offshore entity? Is the income offset by the bad debt?)
- anything else I haven't thought about

John McCafferty:

#

2/4-

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copy of  
Henry's signed

portfolio interest

Does GFI own  
10% or more of foreign  
entity?

GFI

GFI

Sincere (what is with rep)

1. non-recourse  
SEC only by  
bill note

Gm.com

Int exp

artificial  
running out  
of funding

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HST\_PSI005574





LEHMAN BROTHERS

To: Sam Wylly  
 From: Lou Schaufele *LS*  
 Date: August 22, 1995

Re: SSW Collar SSW stock @ \$46 3/4

Currently: MAVERICK ENT.

Long Put @ \$32.57  
 Short Call @ \$53.56

Cost to roll put to \$42	Appx. \$3.55
Borrowability	\$9.43
Net Borrowability	$\$9.43 - \$3.55 = \$5.88$

## CALL ALTERNATIVES

- |                                   |              |
|-----------------------------------|--------------|
| 1. Repurchase calls outright      | Appx. \$9.50 |
| 2. Roll call strike price to \$70 | Appx. \$5.35 |

*The #'s for  
 Bulldog/Pitkin  
 would be similar*

*But the Net  
 borrow is less  
~~from~~ due to  
 the fact that we  
 are only stepping  
 the <sup>put</sup> up  
 from 36 → 42  
 so <sup>net</sup> borrow is  
 approx 3.25.  
*LS**

Sam,

Call me when you have time to discuss. I did give these numbers to Shari.

214-880-4833 CHARLES WYLY

414 P01 DEC 23 '99 09:56

Cox, Mary

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From: Michelle Boucher [mailto:michelle.boucher@wyly.com]  
Sent: Thursday, December 23, 1999 8:38 AM  
To: charles.wyly@wyly.com; 'evan\_wyly@wyly.com'; Shari Robertson (E-mail)  
Subject: michael's options

Lou Schaulele called today, and if we want to liquidate US Government Agencies for CW entities - (Quayle Limited) for the option exercise then he would like to liquidate these today.

He is afraid that if we wait until next week, we may (less than 10% chance) not be able to sell them as they are so close to maturity. If we do liquidate, the funds will sit on the money market account and will still earn something. What vs \_\_\_\_\_ vs \_\_\_\_\_

Let me know how you feel about this - I need to get back with Lou today.

Thanks!

Carol Patrick

- Figure - bond? (blue size)
- Taxes on exercise?  $\$50,000 = 12.5\%$
- Warrant  $\$15/100$  vs. stock buy.
- Exercise & Buy July -  $\$15/100$
- 745, Tax on spread, Keely - 99 or 00
- Appropriate thing to do.
  - 2.3  $2/3 \rightarrow 21\frac{1}{2}$
  - 1.350  $\rightarrow$   $\frac{1}{2}$   $\rightarrow$  take new 10 yr. Options
  - Some self imposed constraint??
- SE sold enough  $\$55W$  by August
- Tell + Software 77% + New - complete

5.5M SW - W. 2.0  
 6 Jan  
 13 Early Feb Road.  
 11% + yesterday.  
 2  
 14 2  
 4-1 P  
 11  
 2.0  $\rightarrow$   $\frac{1}{2}$   $\rightarrow$  1.3 / 66  
 7.0 5%  
 5.4 To 2.0  
 60% - to price  
 5.4 3.6  
 $\frac{1}{2}$  of 5.4 = 1.8  
 2.7  
 CW

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**MEMO****Maverick**

To: Charles  
 From: Sam  
 Date: June 6, 1996  
 Subject: Maverick Discussion Sheet

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Existing ownership of Maverick is 66.88% Sam's Family and 33.12% Charles' Family. Charles' Family will reduce to 5% ownership.

The current shareholders have performance fees of [REDACTED] deferred. Those fees should be moved from capital to a deferred performance payable to the existing partners. Sam's Family would retain [REDACTED] and Charles' Family [REDACTED] and payment would be made when the 10 years elapse. This minimizes taxes for Charles' Family and minimizes cash flow requirements for Sam's Family.

Charles currently owns deferred compensation of [REDACTED]. If he remains an owner, it will not be distributed or taxable at this time.

Capital accounts would be as follows at 4/30/96:

Capital Account	[REDACTED]
Reduce by Deferred Performance	[REDACTED]
Reduce by Ainslie Fee	[REDACTED]
Reduce by E. Wyly Fee	[REDACTED]
Employee Bonuses (Estimated - 10% of profits)	[REDACTED]
Maverick Capital Account @ 4/30/96	[REDACTED]
Sam Family Capital Account	[REDACTED]
Charles Family Capital Account	[REDACTED]

In exchange for retaining 5% of Maverick a minimum balance of \$40 mm will be retained in the Hedge funds. Income may be distributed and losses do not need to be made up. Additionally, Charles' Family agrees to not pull out funds in excess of \$1,000,000 per quarter without a six month notice. Approximate balances at 5/31/96 are:

Maverick Funds USA - Entrepreneurs and Miller	[REDACTED]
Maverick Income Fund - Entrepreneurs and Aspen	[REDACTED]
Maverick Fund, LDC - IRA, Pension and Foreign	24,372,333
Maverick Income, LDC - Foreign	<u>9,525,113</u>
Total	<u>40,127,725</u>

Memorandum  
Page Two

Existing ownership of Scottish Annuity is 2/3 Sam's Family and 1/3 Charles' Family. Charles' Family ownership will be reduced to 5%.

Irish Trust company will remain owned 2/3 by Sam's Family and 1/3 by Charles' Family.

The family office will remain combined with employees continuing to be paid from Sterling Software.

Seventy-five percent of Keith Hennington's compensation will be moved to Sterling Software

Maverick Entrepreneurs will stay the same for present. Ultimately the stock will be distributed to the Family members and exchanged for a private annuity or held in the U.S.

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## **FAX TRANSMITTAL**

---

TO: Maggie Green FROM: Amy Browning  
COMPANY: Marguerite Green & Associates PHONE: 214-  
PHONE: 214- FAX: 214-  
FAX: 214- DATE: January 21, 1997  
NUMBER OF PAGES (including cover): 1 TIME: 3:15pm

**COMMENTS:**

Pursuant to Mr. Wyly's telephone conversation, please invoice future purchases of collectibles as follows:

Souleiana Limited  
Lorne House Trust Limited  
c/o Lorne House  
Castletown, Isle of Man  
British Isles

Each invoice must be accompanied by a picture of the collectible being purchased. In addition, please send these invoices and the necessary documentation to the attention of Shari Robertson, 8080 North Central Expressway, LB31, Dallas TX 75206.

If you have any questions, do not hesitate to contact me.

cc: Charles Wyly  
Shari Robertson

8080 North Central Expressway, Suite 1100 • LB-31 • Dallas, Texas 75206 • 214/891-8343

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PSI\_ED00076875

Lorne House Trust Limited,  
Lorne House,  
Castletown,  
Isle of Man IM9 1AZ.

January 5th, 1998.

Gentlemen,


**Restructuring of Scottish Holdings, Ltd.**

We understand that you are concerned that the following documents which we are asking you to sign as Trustees of the Tyler Trust appear to be more favourable to the beneficiaries of the South Madison Trust than to the beneficiaries of the Tyler Trust.

It is nevertheless our wish that you should sign them on behalf of the Tyler Trust and we hereby indemnify you against any costs of any nature and to hold you harmless with respect to any consequences of your signing the documents.



Shari Robertson  
Disinterested Member,  
Committee of Protectors.



Charles J. Wyly, Jr.  
Settlor.

*Handwritten note:*  
Tyler Trust  
in safe.  
Koss' file

TOTAL P.002

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PSI00131346



found in Wally  
file

Dear Sam,

Thanks for the bids and purchases  
for the O'Connell Auction.

Enclosed are your invoices for the  
two paintings (Griffing and Price). As you  
will see there is one invoice for "The  
Fires of Santa Anna, 1836," which is made  
out to Sterling Software, while I  
made out 2 invoices for the Griffing,  
"The Lost Documents".

The reason for 2 invoices on the Griffing, is  
to allow you to choose the one you wish to  
use in taking title. Select the one you  
wish to use and process it and discard  
the other.

Speak with Bob Drummond, the co-director  
of the auction, and he is planning on



# WIND RIVER GALLERY

Shipping "The Fires of Santa Anna, 1836"  
to you in Dallas, and ship the lost  
Documents by shipping to Aspen.

Bob would like payment by August 12<sup>th</sup>  
and begin shipping the same week.

Hope to see you while you are  
in Aspen later this week.

Best  
Bill Leach



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Subcommittee on Investigations



Sheri Robertson  
08/19/1999 07:29 AM

To: Michelle Boucher  
cc:  
Subject: Re: fs

Are we talking about July? I did do June. Hope we're not duplicating efforts.

CW is selling two properties in Co. to Quayle. I think where we're getting is that Quayle will form 2 subsidiaries which are U.S. Corps. Should know later today. We've talked with Bond and he's okay with the Castlecreek purchasing properties that will be used by the "potential" beneficiaries of the trust. This is a non-reportable item by the Trusts and the U.S. parties. Rodney is doing the legal work. I sent to your office and Bond copies of the appraisals and selling prices. Hope to close this next week.

Sam still has a contract pending on one property. It is up to him to determine whether he wants to counter. I'm not sure what he's going to do. He seemed to be getting a little worried about the markets and wasn't too sure he should be spending \$10 - \$14 million to purchase the property and then spending money on building houses.

D. Harris has been raising hell about the money going into Green Mountain. It's not that I don't think he should be, just adds one more stress level. Currently he has agreed to fund through Sept. I've had that discussion with both Sam and Evan. Surprisingly, Sam did not explode, but it actually seemed to cause him to step back and re-think the money is spending. We'll see what happens. Anyway, I do think we need to give notice to FUND to redeem \$10 million for the SW entities to fund Green. Do you have time to give me a recommendation on needs to get redemption notices in before 9/17?

There's been some new trust regulations and ugly case law recently. From several lawyers Mike and I have been strongly recommended that we no longer serve as "U.S. citizens", as protectors. We're thinking about forming a Channel Island corp. that is the protector. The owners would be Mike and I < 50% (stay out of the CFC rules) and you, David Harris, David Bester, Daughtery and Fullertone the other owners. Mike is particularly concerned about all the bad press about Cayman lately. That's why he's picking the Channel Islands. We're thinking it might be good for the administrative fee from the trusts to be paid to this new corp and then hire ITC as an administrator. We're still exploring....I'll keep you informed as we get further along.

Michelle Boucher > on 08/18/99 04:27:46 PM



Michelle Boucher on 08/18/99 04:27:46 PM

To: Sheri Robertson/M  
cc:

Subject: fs

I finished the consolidation, and did a reasonableness check at the CW and SW and domestic consolidation levels. I had some questions for Elaine re: Brush Creek's holdings and valuations of SSW, SE and MIKE. Also, her summary sheets did not show the correct MV per share, but had the right extended total market value since they were pulled up from sub-sheets.

Hopefully she'll respond first thing tomorrow and I can get the file sent to you tomorrow afternoon or night. If I can't get in the office tomorrow, Lara will pick it up from me tomorrow night and upload it to you Friday.

PSI-WYBR 00529

**From:** Schaufele, Louis J  
**Sent:** Thursday, October 07, 1999 8:46 AM  
**To:** 'Michelle Boucher'  
**Cc:** Crittenden, Michele  
**Subject:** RE: SSW Swap

— Redacted by the Permanent  
 Subcommittee on Investigations —

I don't think that you need to do anything, supposedly most of the documents went to IOM last night. We are working on the final term sheet. I don't think that there will be any problem on Moberly and Roaring Fork, what we will do is to get this initial paperwork for the entities we have and commence with the trade and basically finish the paperwork while we are buying the stock. I am sorry on the report, we will get it. I thought that since this was such a small amount and currently outside the swap that what you wanted was when we started the swap.

-----Original Message-----

**From:** Michelle Boucher (Schaufele, Louis J)  
**Sent:** Wednesday, October 06, 1999 3:54 PM  
**To:** 'Schaufele, Louis J'  
**Subject:** RE: SSW Swap

Is there something I should send to IOM tonight (for Moberly) so they are ready tomorrow? Also, will Roaring Fork be able to participate in this time frame too?

I waiting to confirm size etc...I expect you will hear this from Evan, if not touch base with him. It is my understanding that he is taking care of discussing terms and size with you.

Finally, I did not receive the trading summary from yesterday re: volumes and prices. Evan Wylie sent me a Bloomberg sheet showing the day's trading activity. Could you arrange for me to receive this for today as well as the form of summary requested yesterday (I need to report to the Wylie's with the info). The Bloomberg screen is an 'Equity GIP'.

Thanks!

-----Original Message-----

**From:** Schaufele, Louis J  
**Sent:** Wednesday, October 06, 1999 3:24 PM  
**To:** 'michelle boucher'  
**Cc:** Crittenden, Michele  
**Subject:** SSW Swap

We should be ready to go tomorrow. The entities will be receiving term sheets, letter stating that they can buy/sell stock without any blackouts (meaning they are not insiders), we will be needing corporate resolutions etc.. We have much of this in Dallas. They will need to take a verbal order from someone at the I of M (standard procedure with swaps). Moberly is the exception and will receive an ISDA agreement (we already have these for all the other entities) and the same other documents. Once we get the above we can start executing and then upon completion can allocate to the various entities (so Moberly won't be affected).

the terms are going to be

30% collateral (this will earn interest)  
 I of M pays Lehman L+125  
 Lehman pays the performance of SSW on the upside  
 Mark to markets at 50k intervals

What is the term and size?

In regard to using other collateral, given our earlier conversation we should let this sit and after the dusts settles I will explore.

— = Redacted by the Permanent  
Subcommittee on Investigations

Keeley Hennington  
10/11/99 06:22 AM

To: Michelle Boucher [REDACTED]  
cc: Shari Robertson/Maverick@ [REDACTED]

Subject: Re: CW property acquisition [REDACTED]

Michelle -  
In my discussions with Charles last week, he said due to the option sale earlier this month that the sale of the properties was not as time sensitive. The total dollars will be around \$25 million. I have to finish some estate planning for Charles this week and am also planning on firming these transactions up. I agree that we should be closed by the end of month unless Charles wants to delay. I should have a better indication from him this week and will let you know. Thanks  
Michelle Boucher <mboucher@ [REDACTED]> on 10/08/99 09:23:08 AM

Michelle Boucher [REDACTED] 10/08/99 09:23:08 AM

To: khennington  
cc:


Subject: CW property acquisition

My understanding is that shortly we are looking to sell four properties to the offshore system. Shari indicated that you could give me an idea of the total dollars involved.

Also - do you know what the time frame is for accomplishing this? I thought it was by the end of this month.

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[D]  
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PSI\_ED00082736

 Keeley Hennington  
10/13/99 06:16 AM

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Subcommittee on Investigations


To: Michelle Boucher  
cc: Shari Robertson/Maverick

Subject: Re: CW real estate

We have now decided to have the liabilities assumed as part of the transaction which means total cash that needs to be available is around around \$12.5M. I am not sure we are going to be ready to go with all of them by Nov. 1, so I would think the \$10M would be sufficient to handle what we need before Dec 1.

Shari- Do you think we should sit down with Charles again and make sure he wants to go forward with everything (you may have already had this discussion with him). He wants to increase the sales price 6% on the Aspen properties based on some information from an appraiser that prices are going up about 1% per month, which accounts for the other \$1M. Let me know your thoughts.

Michelle Boucher <mboucher@psd.wv.gov> on 10/12/99 07:05:51 PM

 Michelle Boucher <mboucher@psd.wv.gov> on 10/12/99 07:05:51 PM

To: khennington  
cc:

Subject: CW real estate

As part of the recent SSW/SE transaction I had provided for \$10M to be used to acquire these properties (based on what Shari initially thought would be about the size). I will need to raise the additional \$15M via redemptions from Maverick (which we were planning on doing for the SSW/SE transactions and changed our minds - so it is not unexpected). But technically we need to give 30 days notice to do this so I'm looking at having \$10M avail right now and \$15M available at Dec 1st. I can request that Lee agrees to waive notice and see if we can get out for November 1st if you think we need to do the transaction sooner than in 6 weeks time. I've given Shari a heads up that we may want to do this, but let me know how you feel about the timing.

Thanks!  
Michelle

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[D]  
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PSI\_ED00082772

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Subcommittee on Investigations

Shari Robertson  
03/02/2000 02:20 PM

To: mbouchard [REDACTED]  
cc:  
Subject: CW

Ready to start a fund in the Cayman Islands. Wants to seed with \$5 million and call the fund First Dallas Fund, Ltd. First Dallas LLC will be the investment manager (he thinks Elaine has this formed) and you will need to have an investment management agreement drawn up. He may want to purchase something in the next few days. If so, we'll purchase in an IOM corp if FDL is not formed and contribute the assets. FDL only needs a brokerage account at Lehman's, it apparently will only be making private investments.

He's thinking about acquiring \$10 million of GMER debt convertible to common within the next 30 days.

He's realized that you priced SE at SSW price. Would you e-mail him a new financial.

He's not ready to decide what he's doing on SSW options. Will let us know. He's think that it probably makes more sense to close out the swap plus some of the options rather than all options. Will get back to us.

You mutual fund license only allows for 15 entities - correct? Think you need to figure out how to increase that pretty quickly. If Sam adds 2 and Charles adds 1 and Maverick's going to start a master/feeder commodities fund you could very shortly have five more funds. Let me know how big an issue this is. Should we consider a trust company for the family and one for the fund administration?

\*\*\*\*\*  
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\*\*\*\*\*

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PSI\_ED00047852

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Subcommittee on Investigations

**From:** Keeley Hennington  
**Sent:** Wednesday, October 03, 2001 1:01 PM  
**To:** mboucher@ [REDACTED]  
**Subject:** Urgent - Charles

This was Quayle Ltd.

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----- Forwarded by Keeley Hennington/htst on 10/03/01 02:07 PM -----

Keeley Hennington  
10/03/01 01:59 PM

To: mboucher@ [REDACTED]  
cc:  
Subject: Urgent - Charles

Hey, Charles called and wanted to sell 100,000 shares of MIKE at \$42.00 or better today and asked me to call Lehman. They were okay with my verbal and just need you to follow up and get some instruction from the trustees also. They were selling today on my authorization. I really hope that is okay.

If you get a chance to call me later on all this other MIKE [REDACTED], feel free tonight at 972-[REDACTED].

Thanks

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PSI\_ED00000649

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Subcommittee on Investigations

From: Evan Wyly@ [REDACTED] on 03/29/2000 02:25 PM CST  
To: Michelle Boucher, Shari Robertson/Maverick@ [REDACTED]  
cc: ralexander@ [REDACTED]

Subject: Green Mountain Convertible Debenture Term Sheet


Sam recommends fulfilling the Green Mountain request for \$7 million for April. Green Mountain expects BP Amoco to invest [REDACTED] million in two tranches in a security that is similar to the attached \$50 million convertible debenture. The \$7 million would be invested in the attached security. There are other strategic and institutional investors who are expected to invest in this security. Sam recommends investing whatever remaining balance that other investors do not take of the \$50 million. Charles will be contacting you regarding participation.

--- Forwarded by Evan Wyly/Maverick on 03/29/00 02:00 PM ---

"Fallon, Veronica" To: evan wyly  
ronnie.fallon@ [REDACTED] cc: "Canon, Scott" <scott.canon@ [REDACTED]> "Zamore, Peter"  
03/28/00 02:21 PM Subject: Convertible Debenture Term Sheet

Evan, Scott asked me to send you the enclosed term sheet. Scott is dealing with Goldman to get an exact price per share on a fully diluted basis. Please let me know if you have any questions. <<TERMS FOR CONVERTIBLE SECURITY 3-28-002.doc>>

Veronica M. Fallon  
Assistant General Counsel  
GreenMountain.com  
55 Green Mountain Drive, P.O. Box 2206  
South Burlington, VT 05407-2206  
Telephone: (802) [REDACTED]  
Fax: (802) [REDACTED]

 - TERMS FOR CONVERTIBLE SECURITY 3-28-002.doc

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PSI\_ED000081692

**Memo**

To: Shari Robertson, Mike French  
 Cc: Keeley Hennington, Donnie Miller  
 Re: Charles Wyly Family meetings – week of 10/09/00  
 Date: October 16, 2000  
 From: Michelle Boucher

---

Keeley & I met with Charles & Donnie on 10/11/00, here is an update on recent developments:

**First Dallas International:**

Charles has a planned investment in a new Peter Ackerman venture called "Fresh Direct". It is a web based consolidator of fresh foods. You can order off their website and they will ship anywhere in the NY area. They have made significant progress on their warehouse facilities and distribution center in Long Island, and they hope to be up and running in about 1 year's time. The planned cost of this is \$45Million, and Charles would like to commit \$1Million through First Dallas International for an October 31<sup>st</sup> closing. Jim Lincoln will forward documents once received, but we expect the investment to be made into a tranche of preferred stock.

**First Dallas Ventures:**

This is the venture cap fund that Donnie and Jim are managing. Charles has authorised investments up to \$10Million at this time. They are contemplating further investment in Cool Partners Inc., as well as other predominantly web-based ventures. Jim and Donnie both appear to be really enjoying this venture.

**Ranger/Precept:**

It does not appear that Charles and Sam have been able to get together to work out details of Charles' involvement with Ranger/Precept and the Ranger Management company. We had ordered tentative redemptions from Maverick for November 1<sup>st</sup>, which we'll roll to December 1<sup>st</sup> if details have not been worked out beforehand.

**Sport Horses:**

Charles is looking at establishing a breeding and equestrian training facility with Emily's involvement. A business plan has been presented, involving the acquisition of approximately 140 acres of land just north of DFW airport. Only 50 acres will be used for the business venture, and it is likely that the remaining land will be subsequently sold. Keeley and I are consulting Rodney to see if we can use a structure similar to that which was used for the gallery in Aspen, thus utilizing foreign assets for the cash injection and contributing Emily's horses in the same way Kelly contributed the gallery's inventory stocks. We would likely try to sub-divide the property and buy the land held for resale domestically, through another structure. I have not seen it yet, but understand the business plan indicates the business will not likely cash flow for the first few years, and will need ongoing capital. The anticipated initial commitment will be a minimum of \$3Million.

**Little Woody Creek Ranch:**

This is the house that Emily and Jennifer use. We put together all documentation to sell this property to an IOM company last November/December. Charles has asked us to proceed once again and effect the sale. All domestic and IOM structures and funds are in place. Keeley will pull the documents and we'll touch base with Charles again next week and proceed.

**Lambda Properties:**

Nothing was directly discussed regarding construction activities on Charles and Dee's house in Aspen. If they decide to proceed, we will recommend that an IOM company acquire the property, to provide funds for the construction project. It is likely that this will not be underway until well into next year, with construction commencing in 2002. As with the Little Woody Creek Ranch property mentioned above, there are some issues regarding ownership of the existing properties which will need to be properly

**MAV008220**



considered and dealt with in the new structures, especially within the context of creating sub-funds of the IOM trusts (see below).

**Sub-funds:**

Charles is aware that Sam is looking at creating sub-funds with the IOM assets, and is contemplating the same. We discussed the idea of creating them by using certain real estate transactions as the initiating transaction. This would include the new Sport Horses venture for Emily, and selling some of the Colorado properties which involves all the children to the foreign system. Charles also discussed making specific \$20million allocations to each of Martha, Emily and Jennifer, indicating that he thought Chip was well taken care of domestically.

**MAV008221**

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Subcommittee on Investigations

From: Keeley Hennington  
Sent: Monday, July 23, 2001 2:32 PM  
To: "Michelle Boucher" [REDACTED]  
Subject: Re: Intelcon

I have sent a note to Sam re: the deal,. I will let you know what I hear back. I do not want to proceed without his ok

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"Michelle Boucher" [REDACTED]  
07/23/01 02:02 PM

To: <Keeley\_Hennington@HTST@ [REDACTED]>  
<shari\_robertson@ [REDACTED]>  
cc:  
Subject: Re: Intelcon

I agree with Shari, and also think that the trustees will be happy with this, given that at one point they were prepared to get nothing for it to eliminate the exposure to the 'russians'. I believe they had Turoff looking at this last year.

-----Original Message-----

From: shari\_robertson@ [REDACTED] pm  
To: Keeley\_Hennington@HTST@ [REDACTED]  
<Keeley\_Hennington@HTST@ [REDACTED]>  
Cc: mboucher@ [REDACTED]  
Date: Monday, July 23, 2001 2:26 PM  
Subject: Re: Intelcon

>  
>Agree with take the money and run.  
>  
>Turoff is definitely the terminator. David may not remember that Sam and  
>Steve ended up as adversaries in a lawsuit the last time they did business  
>together. I still think Steve is a good choice.  
>  
>\*\*\*\*\*  
>\*\*\*\*\*  
>

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SEC\_ED00006251

PSI\_ED00006251

**Memorandum**

To: Charles J. Wyly Jr.

From: Keeley Hennington *KH*

Date: December 4, 2000

Subject: Soulieana Limited

cc: Michelle Boucher

We have finished our accounting of the assets of Soulieana Limited. There are currently, before any recent purchases, 212 items at a total purchased value of \$3,048,412.00. Many of these items were minimal cost items and we would prefer to move these off Soulieana Limited inventory.

Additionally, we would like to set the cut-off value at \$10,000.00 for any new purchases and anything under this amount will be purchased domestically. Based on current inventory, if you were to purchase back everything under \$10,000.00 it would require a payment of \$382,365.33. Since these items are at Deloache the payment would need to come from you individually. This would reduce the Soulieana inventory to 65 items with a purchased cost of \$2,666,000.00.

Please let me know if you agree with this proposal and we will move forward.

*OK*  
*12/6/00*

*Invoice being sent from Soulieana.*

718

Keeley Hennington/htst  
10/09/01 04:24 PM

To Ischaufe@  
cc  
bcc  
Subject Forward

— = Redacted by the Permanent  
Subcommittee on Investigations

Well, Evan just called and said Sam has decided to not go forward with the forward sale or the call spread. He said he was sorry for wasting everyone's time, but had just thought more about the transaction and was happy with what was done last week and just wanted to leave it at that. Give me a call if you want to discuss

Thanks

---

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PSI00060652

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Subcommittee on Investigations



Michelle Boucher

To: evan wily

cc:

Subject: RE: trustee meeting - Michaels

01/10/2000 03:15 PM

Thanks Evan. I'll speak to Shari to obtain the protector's recommendation and get it started.  
Michelle

-----Original Message-----

From: evan\_wily@ [REDACTED]  
Sent: Monday, January 10, 2000 5:46 PM  
To: mboucher@ [REDACTED]  
Cc: Shari\_Robertson/Maverick [REDACTED]  
Subject: RE: trustee meeting - Michaels

I just spoke to Sam, and he recommends proceeding with the exercise and sale of the \$12.50 Michaels options now.

Michelle  
Boucher

To: evan wily

cc:

Subject: RE: trustee meeting

01/10/00  
02:48 PM  
Please  
respond to  
[REDACTED]

When I spoke to Shari this morning, she thought that you and Sam were looking at an exercise and hold scenario for the Michaels options, and that I should start looking for cash flow to fund the exercise of the offshore piece (likely redemptions from offshore fund investments - Maverick, Edin, Deerfield..). She also mentioned that because of domestic liquidity issues, that you might want to look at having offshore acquire the domestic options, and exercise and hold the stock offshore. I am swamped getting year end financial information together for both Maverick and the Trusts, but was going to mention this to you with the intention that I'd put something together next week and we could discuss it while I'm in Dallas. There is also a possibility of margining some of the offshore piece instead of using all the cash. I can explore this with Lehman's if you think it's worthwhile.


-----Original Message-----

From: evan\_wily@ [REDACTED]

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PSI\_ED00070164

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Subcommittee on Investigations

 Keeley Hennington  
10/11/99 06:22 AM

To: Michelle Boucher  
cc: Shari Robertson/Maverick@

Subject: Re: CW property acquisition

Michelle -

In my discussions with Charles last week, he said due to the option sale earlier this month that the sale of the properties was not as time sensitive. The total dollars will be around \$25 million. I have to finish some estate planning for Charles this week and am also planning on firming these transactions up. I agree that we should be closed by the end of month unless Charles wants to delay. I should have a better indication from him this week and will let you know. Thanks

Michelle Boucher <[REDACTED]> on 10/08/99 09:23:08 AM



Michelle Boucher <[REDACTED]> on 10/08/99 09:23:08 AM

To: khennington  
cc:

Subject: CW property acquisition

My understanding is that shortly we are looking to sell four properties to the offshore system. Shari indicated that you could give me an idea of the total dollars involved.

Also - do you know what the time frame is for accomplishing this? I thought it was by the end of this month.

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[D]  
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PSI\_ED00082736

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Subcommittee on Investigations

Keeley Hennington  
02/28/2001 07:52 AM  
To: MBoucher@  
cc:  
Subject: FYI

I was talking to Charles yesterday and he was kind of thinking out loud on some stuff. He was talking about use of off-shore cash and was using the following for planning - thought I would pass it along even though he was just thinking.

First Dallas - \$10.5 future commitments (Brazos, FDV, ?)  
\$55 Little Woody - \$10.2 (Charles and Dee home in Aspen)  
Little Woody - \$4.5 (next week deal)  
Sport Horses - \$3.0 (capital improvements)  
Jennifer and Jim - \$4.0 (new house)  
Charity - ???

He mentioned that he plans to make a pledge some time this summer of about \$10M payable \$2

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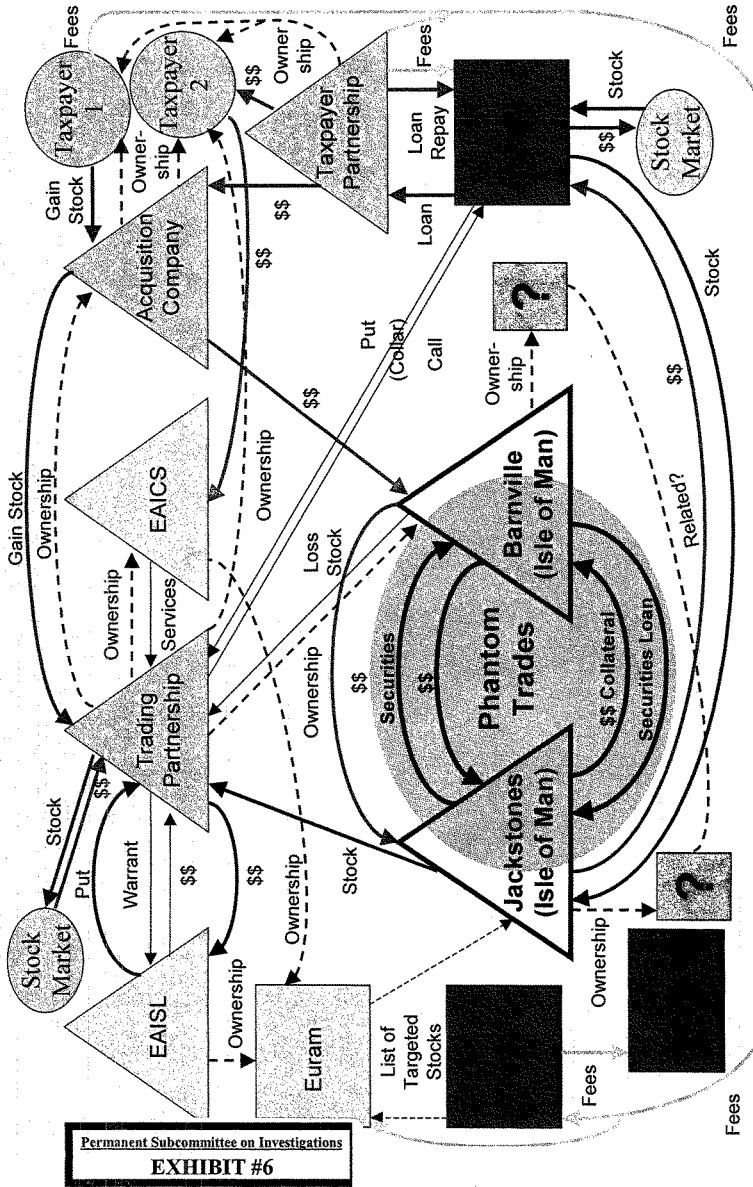
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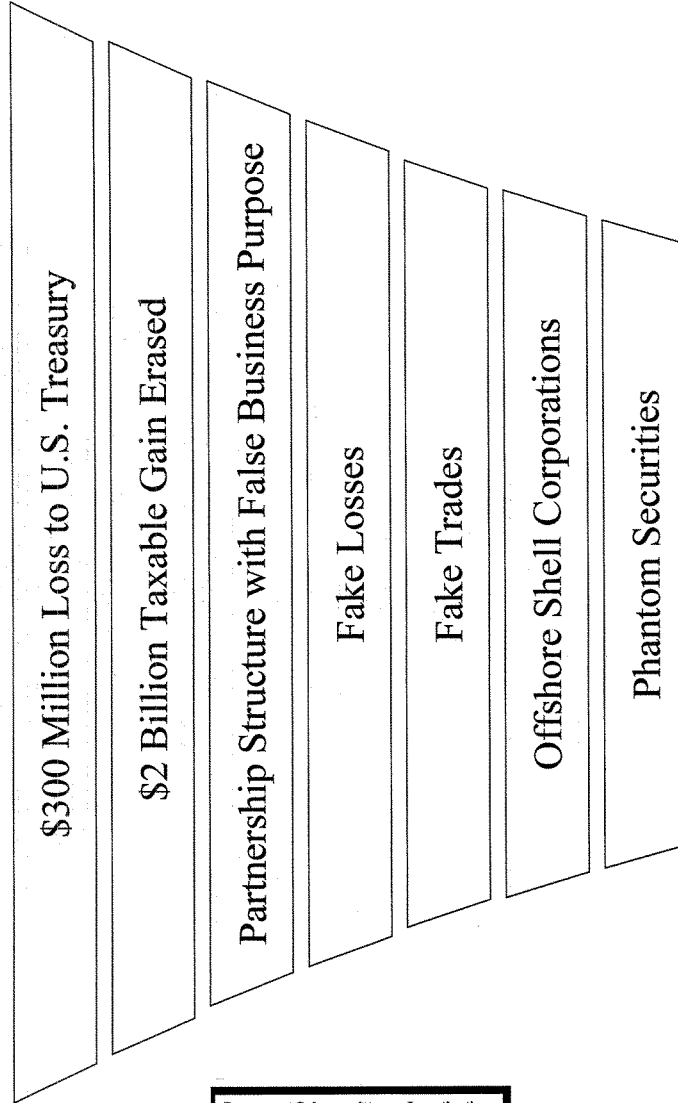
## POINT Strategy



Prepared by the Permanent Subcommittee on Investigations, Minority Staff



## The Truth Behind POINT



Permanent Subcommittee on Investigations  
**EXHIBIT #7**

# BULLDOG TRUST

“The reason for creating the trust was tax driven. Its purpose was to take the assets held/to become held within the trust and various Isle of Man companies owned by it outside of the settlor’s estate for US gifts and estate tax purposes and at the same time to create a fund the income and gains of which were not attributable to any of the settlor or his family. The assets within the trust are now very substantial.”

Permanent Subcommittee on Investigations  
EXHIBIT #8

**HAIM SABAN  
ACTUAL**

**"PROFIT" COMPARED TO LOSS CLAIMED FOR TAX PURPOSES**

Actual "Profit" As:			Tax Loss Acquired from
	Represented by Quellos	Calculated by Subcommittee Using Actual Fees	Barnville
Total Investment Gain	\$129,927,084	\$129,927,084	
Cost of Collar	(\$116,759,623)	(\$116,759,623)	
Loan Fee to HSBC	(\$1,000,000)	(\$1,500,000)	
Euram Fees	(\$7,688,611)	(\$7,688,611)	
Quellos Fees		(\$53,909,930)	
Interest Expense for Loan	(\$2,651,667)	(\$2,651,667)	
<b>Net Actual "Profit"</b>	<b>\$1,827,183</b>	<b>(\$52,582,747)</b>	<b>Loss Acquired (\$1,446,000,000)</b>

TTP  
Silverlight

**HAIM SABAN  
PROJECTED  
MAXIMUM "PROFIT" POSSIBLE WITH COLLAR AT 108%  
COMPARED TO TAX LOSS ACQUIRED**

<b>Projected Maximum "Profit"</b>	<b>Tax Loss Acquired from Barnville</b>
Maximum Gain from Stock (8% of Initial Stock Value)	Loss to TTP (\$686,000,000)
Euram Fees	Loss to Silverlight (\$760,000,000)
Quellos Fees	
Cost of Collar	
Other Financing and Loan Costs	
<b>Maximum "Profit" Possible</b>	<b>Loss Acquired (\$1,446,000,000)</b>

Permanent Subcommittee on Investigations  
**EXHIBIT #9b**

ROBERT W. JOHNSON, IV  
**ACTUAL**  
**"PROFIT" COMPARED TO LOSS CLAIMED FOR TAX PURPOSES**

Actual "Profit"		Tax Loss Acquired From
		Barnville
Gain from Stock	\$8,333,791	Basis (\$248,844,063)
Cost of Collar	(\$5,697,355)	Trade Value \$103,942,452
Other Financing and Loan Costs	(\$2,019,718)	
Euram Fees	(\$1,450,000)	
Quadra Fees	(\$2,900,000)	
<b>Net Actual "Profit"</b>	<b>(\$3,733,282)</b>	<b>Loss Acquired (\$144,901,611)</b>

Permanent Subcommittee on Investigations  
**EXHIBIT #9c**

**ROBERT W. JOHNSON, IV**  
**PROJECTED**  
**MAXIMUM "PROFIT" POSSIBLE WITH COLLAR AT 107%**  
**COMPARED TO TAX LOSS ACQUIRED**

728

Projected Maximum "Profit"		Tax Loss Acquired From
		Barnville
Maximum Gain from Stock (7% of Initial Stock Value)	\$7,275,972	Basis (\$248,844,063)
Euram Fees	(\$1,450,000)	Trade Value \$103,942,452
Quadra Fees	(\$2,900,000)	
Other Financing and Loan Costs	(\$4,400,000)	
<b>Maximum "Profit" Possible</b>	<b>(\$1,474,028)</b>	<b>Loss Acquired (\$144,901,611)</b>

Permanent Subcommittee on Investigations  
**EXHIBIT #9d**

**ROBERT W. JOHNSON, IV**  
**PROJECTED**  
**MAXIMUM PROFIT POSSIBLE WITH COLLAR AT 110%**  
**COMPARED TO TAX LOSS ACQUIRED**

729

Projected Maximum Profit	Tax Loss Acquired From Barnville
Maximum Gain from Stock (10% of Initial Stock Value)	Basis (\$248,844,063)
Euram Fees (\$1,450,000)	Trade Value \$103,942,452
Quadra Fees (\$2,900,000)	
Other Financing and Loan Costs (\$5,150,000)	
<b>Maximum Profit Possible</b>	<b>Loss Acquired (\$144,901,611)</b>
	<b>\$894,245</b>

Permanent Subcommittee on Investigations  
**EXHIBIT #9e**

### Barnville – Jackstones Transactions

“It was always the case that the portfolio of securities traded by and between Barnville and Jackstones was of a purely contractual book-entry nature. This was understood by all concerned given the dollar values of the portfolios in question. The sale and purchase of the securities were accomplished through contractual commitments (the Purchase Agreements and related confirmations) which gave rise to legal obligations which were recorded in the entities’ respective books and records. The settlement of these sale and purchase obligations (of delivery on the part of Jackstones and of payment of the purchase price by Barnville) were settled by a process of netting with equal and opposite obligations under stock lending transactions (the Securities Lending Agreements) entered into between them at the same time. Though the transactions occurred off-market, all prices for the constituent shares were determined by reference to market-published prices ....

“Put another way, Jackstones sold short the underlying securities to Barnville, which it “covered” through borrowing those same securities back from Barnville under the stock loan. From Barnville’s perspective, it was long the stock, but subject to the stock loan with Jackstones. Its purchase of those shares from Jackstones was funded by the cash collateral that Barnville was due to receive from Jackstones under this stock loan. For Jackstones, this creates a short position which renders it liable to re-deliver the stock upon any recall by Barnville or its assignee.

“Because the transactions were conducted in this manner..., no physical transfer of shares were made. No transactions took place over any exchange and no cash transfers passed between bank accounts of the two companies....”

- John Staddon  
Global Head of Structured Products  
Euram Advisors

July 15, 2006 email to the Permanent Subcommittee on Investigations



## Knowledge of Book-Entry Nature

“This however was always understood to be the case; Euram obtained assurances from Quellos that the book-entry nature of these transactions had been known by the counsel with whom they developed the strategy and that it would be disclosed to any client advisor and opinion provider involved in any subsequent implementation. However, Euram acted on directions of Quellos, including the content and timing of all trading activity and the subsequent transactional steps involving Quellos clients.”

Permanent Subcommittee on Investigations  
EXHIBIT #9g

731

- John Staddon  
Global Head of Structured Products  
Euram Advisors  
July 15, 2006 email to the Permanent Subcommittee on Investigations

April 20, 1992

Lorne House Trust Company Limited  
Lorne House  
Castletown  
Isle of Man  
British Isles  
Attn.: Mr. R. Buchanan

Re: Pitkin Non-Grantor Trust

Dear Ronnie:

Pursuant to Section 8 of the Pitkin Non-Grantor Trust Agreement dated March 23, 1992 the Committee of Trust Protectors wishes to make the following recommendations to the Trustee.

*once  
signed  
this  
is  
final*

To exercise 100,000 Michaels Stores Options held in Roaring Creek, Limited which is owned by the Pitkin Non-Grantor Trust using a cashless exercise thru First Boston Corporation, 3100 Texas Commerce Tower, 2200 Ross Avenue, Dallas, Texas 75201, Mr. Lou Schaufele, phone # (214) 740-5221. The committee recommends selling all of the stock at a price to exceed at least \$20.00 per share. The exercise price of the stock is \$3.00 a share, requiring \$300,000 to exercise the stock with Michaels Stores, Inc. Cash in excess of exercise price should exceed \$1,700,000. The committee recommends a loan at 6% interest rate, to mature in one year of \$1,040,625 to Little Woody Limited which is owned by the Pitkin Non-Grantor Trust. The committee recommends that cash in excess of the loan be invested in short term, cash-like securities, with some currency risk that you as Trustee feels competes with U.S. certificates of deposits yielding around 4 %.

To exercise 166,500 Sterling Software, Inc. Options held by Little Woody Limited which is wholly owned by the Pitkin Non-Grantor Trust using the cash loaned by Roaring Creek Limited to exercise the stock. The exercise price is \$6.25 per share for a total exercise price of \$1,040,625. The committee recommends that Little Woody Limited hold the Sterling Software, Inc. stock.

To exercise 100,000 Michaels Stores Options held in Maroon Limited which is owned by the Pitkin Non-Grantor Trust using a cashless exercise thru First Boston Corporation, 3100 Texas Commerce Tower, 2200 Ross Avenue, Dallas, Texas 75201, Mr. Lou Schaufele, phone # (214) 740-5221. The committee recommends selling all of the stock at a price to a least exceed \$20.00 per share. The exercise price of the stock is \$3.00 a share, requiring \$300,000 to exercise the stock with Michaels Stores, Inc. Cash in excess of exercise price should exceed \$1,700,000. The committee recommends a loan at 6% interest rate, to mature in one year of \$1,040,625 to Roaring Fork Limited which is owned by the Pitkin Non-Grantor Trust. The committee recommends that cash in excess of the loan be invested

Permanent Subcommittee on Investigations

EXHIBIT #10


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PS100028097

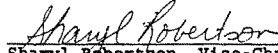
in short term, cash-like securities, with some currency risk that you as Trustee feels competes with U.S. certificates of deposits yielding around 4 %.

To exercise 166,500 Sterling Software, Inc. Options held by Roaring Fork Limited which is wholly owned by the Pitkin Non-Grantor Trust using the cash loaned by Maroon Limited to exercise the stock. The exercise price is \$6.25 per share for a total exercise price of \$1,040,625. The committee recommends that Roaring Fork Limited hold the Sterling Software, Inc. stock.

The committee also recommends that you consider establishing a line of credit for the following corporations with Chemical Bank (Guernsey): Little Woody Limited for \$2,000,000, Roaring Creek Limited for \$1,500,000, Roaring Fork Limited for \$2,000,000 and Maroon Limited for \$1,500,000.

Committee of Trust Protectors:

  
Michael C. French, Chairman

  
Sharyl Robertson, Vice-Chairman  
and Secretary

CONFIDENTIAL  
SEC100016231  
PSI00028098

April 20, 1992

Lorne House Trust Company Limited  
Lorne House  
Castletown  
Isle of Man  
British Isles  
Attn.: Mr. R. Buchanan

Re: Bulldog Non-Grantor Trust

Dear Ronnie:

Pursuant to Section 8 of the Bulldog Non-Grantor Trust Agreement dated March 11, 1992 the Committee of Trust Protectors wishes to make the following recommendations to the Trustee.

To exercise 210,000 Michaels Stores Options held in Tensas Limited, which is owned by the Bulldog Non-Grantor Trust using a cashless exercise thru First Boston Corporation, 3100 Texas Commerce Tower, 2200 Ross Avenue, Dallas, Texas 75201, Mr. Lou Schaufele, phone # (214) 740-5221. The committee recommends selling all of the stock at a price to a least exceed \$20.00 per share. The exercise price of the stock is \$3.00 a share, requiring \$610,000 to exercise the stock with Michaels Stores, Inc. Cash in excess of exercise price should exceed \$3,570,000. The committee recommends a loan at 6% interest rate, to mature in one year, of \$3,500,000 to East Carroll Limited which is owned by the Bulldog Non-Grantor Trust. The committee recommends that cash in excess of the loan be invested in short term, cash-like securities, with some currency risk that you as Trustee feels competes with U.S. certificates of deposits yielding around 4 %.

To exercise 200,000 Michaels Stores Options held in East Baton Rouge Limited which is owned by the Bulldog Non-Grantor Trust using a cashless exercise thru First Boston Corporation, 3100 Texas Commerce Tower, 2200 Ross Avenue, Dallas, Texas 75201, Mr. Lou Schaufele, phone # (214) 740-5221. The committee recommends selling all of the stock at a price to a least exceed \$20.00 per share. The exercise price of the stock is \$3.00 a share, requiring \$600,000 to exercise the stock with Michaels Stores, Inc. Cash in excess of exercise price should exceed \$3,400,000. The committee recommends a loan at 6% interest rate, to mature in one year of \$668,750 to East Carroll Limited which is owned by the Bulldog Non-Grantor Trust. The committee recommends that cash in excess of the loan be invested in short term, cash-like securities, with some currency risk that you as Trustee feels competes with U.S. certificates of deposits yielding around 4 %.

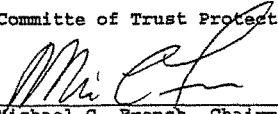
To exercise 667,000 Sterling Software, Inc. Options held by East Carroll Limited which is wholly owned by the Bulldog Non-Grantor Trust using the cash loaned by Tensas Limited and East Baton Rouge Limited to exercise the stock.

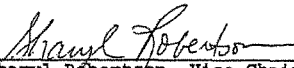
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PSI00081463

The exercise price is \$6.25 per share for a total exercise price of \$4,168,750. The committee recommends that East Carroll Limited hold the Sterling Software, Inc. stock.

The committee also recommends that you consider establishing a line of credit for the following corporations with Chemical Bank (Guernsey): East Carroll Limited for \$8,000,000 and East Baton Rouge Limited for \$2,000,000.

Committee of Trust Protectors:

  
Michael C. French, Chairman

  
Sharyl Robertson, Vice-Chairman  
and Secretary

M E M O R A N D U M

TO: Lorne House Trust Limited/Ronnie Buchanan

FROM: Jackson & Walker, L.L.P.

DATE: April 22, 1992

RE: The Bulldog Non-Grantor Trust and The Pitkin Non-Grantor Trust; Filing Requirements under the Securities Exchange Act of 1934

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Lorne House Trust Limited ("Lorne House"), the Bulldog Non-Grantor Trust ("Bulldog") and the Pitkin Non-Grantor Trust ("Pitkin") will be required to make certain filings with the Securities and Exchange Commission (the "SEC") related to the holdings of Bulldog and Pitkin of securities of Sterling Software, Inc. ("Sterling") and Michaels Stores, Inc. ("Michaels").

Set forth below is a summary of some of the circumstances under which these filings will be made. These legal requirements can be very complex. Please feel free to call us with any questions you may have from time to time.

1. Form 4. For so long as Bulldog owns securities representing in excess of 10% of the outstanding shares of Sterling common stock, Bulldog will be required to file with the SEC Form 4's reporting purchases and sales by Bulldog of Sterling's Common Stock. These reports must be filed with the SEC on or before the 10th day of the month following the month in which the reported transactions took place. Under certain circumstances, profits from a "purchase" and "sale" made within six months of one another must be disgorged. You should consult with Sharyl Robertson or us prior to effecting transactions in Sterling's securities to ensure compliance with Securities Exchange Act rules.

2. Schedule 13D's.

a. Sterling. Lorne House, Bulldog and Pitkin must file an amendment to Schedule 13D when the aggregate holdings of Bulldog and Pitkin in Sterling's securities fluctuate by more than 1% of Sterling's outstanding common stock (currently approximately 90,000 shares). This filing must be made promptly after the transaction occurs.

b. Michaels. Lorne House must file an amendment to Schedule 13D when the aggregate holdings of Bulldog and Pitkin in Michaels securities fluctuate by more than 1% of Michael's outstanding common stock (currently approximately 120,000 shares). This filing must be made promptly after the transaction occurs.

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We can assist you in preparing these filings. In order for us to do so on a timely basis, it is imperative that you keep Sharyl Robertson informed on a timely basis of all transactions effected in Sterling and Michaels securities.

207615/D

cc: Sharyl Robertson

April 22, 1992

Mr. Mark Beasley  
 Michaels Stores, Inc.  
 P.O. Box 612566  
 DFW, Texas 75161-2566


Dear Mr. Beasley:

As Managing Director of Tensas Limited, I wish to exercise 210,000 Michaels Stores, Inc. options. I wish to exercise these options using a cashless exercise through First Boston Corporation, located at 3100 Texas Commerce Tower, 2200 Ross Avenue, Dallas, Texas 75201. The broker on the account is Lou Schaufele and he may be reached at (214) 740-5221.

The following options are being exercised:

100,000 warrants originally issued through Warrant #3 dated 11/20/84, amended 10/24/90, and transferred to Tensas Limited 4/13/92.

110,000 options granted 8/4/86, amended 12/11/87, amended 8/8/89, amended 10/24/90, and transferred to Tensas Limited 4/13/92.

  
 R. Buchanan  
 Lorne House Trust Limited  
 Lorne House  
 Castletown, Isle of Man  
 British Isles

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 SECI00069593  
 PSI00081460




April 22, 1992

First Boston Corporation  
Attn: Mr. Lou Schaefe  
3100 Texas Commerce Tower  
2200 Ross Avenue  
Dallas, Texas 75201

Dear Mr. Schaefe:

As Managing Director of Tensas Limited, I wish to sell Michaels Stores, Inc. warrants utilizing a cashless stock exercise. I wish to sell 210,000 shares. The exercise price is \$3.00 per share. A check for \$630,000 should be issued to Michaels Stores, Inc. You may contact Mark Beasley, legal counsel for Michaels, at (214) 580-8242.

  
R. Buchanan  
Lorne House Trust Limited  
Lorne House  
Castletown, Isle of Man  
British Isles

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PSI00081461

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Subcommittee on Investigations

April 27, 1992

Mr. Russell Collister  
Lorne House Trust Limited  
Lorne House, Castletown  
Isle of Man  
British Isles

Dear Mr. Collister,

I had a short discussion with Ronnie Friday regarding your transmittal of April 24. I wanted to make sure you were clear on the reporting/volume selling requirements of these securities. The securities owned by Little Woody Limited (166,500 options), Roaring Fork Limited (166,500 options) and East Carroll Limited (667,000 options) will be registered securities of Sterling Software when exercised. Michael French's firm can provide Lorne House and the banks with which you are having discussions, a legal opinion stating that these securities are not subject to any Securities and Exchange Commission Form 144 volume Rules and that the securities in no way need to be aggregated with the Settlers of the Trusts - Charles and Sam Wyly.

From my discussion with Ronnie I gather the banks are showing concern that the eventual beneficiaries - the children of Charles Wyly and Sam Wyly are shareholders (they are not directors or officers at this time). Again, these shares would not be aggregated for volume rule selling purposes with the other shares owned by the children. The only requirement for reporting to the Security Exchange Commission is to file Form 13D which just states that Lorne House beneficially controls votes more than 5% of the outstanding stock of Sterling Software.

Let me know if you require any further information regarding these securities. I have a contact with Credit Suisse I will pursue. If it looks good I will get back to you and make an introduction.

Regards,

*Sharyl Robertson*  
Sharyl Robertson  
8080 N. Central Expressway  
Suite 1100 LB-31  
Dallas, Texas 75206

cc: Michael French

Redacted by the Permanent  
Subcommittee on Investigations

13..

Dmd - *Prick*  
L *Little Woody*  
*Roaring Fork*  
*East Carroll*  
L *East Carroll*

CONFIDENTIAL  
PSI00126713

8080 N Central Expressway  
Dallas, Texas 75206  
(214) 891-8341

October 9, 1992

Mr. Ronnie Buchanan  
Lorne House Trust  
Lorne House  
Castletown  
Isle of Man  
British Isles

Re: Bulldog Trust

Dear Ronnie:

Mike French and I would like to recommend to the Trustee to purchase the following security from Sam Wyly:

238,767 shares of Photomatrix Corporation @ \$.12 per share  
for \$26,264.37.

We would recommend that this stock be purchased in one of the foreign corporations owned by Bulldog Trust. Please advise if you wish to proceed with this sale. I am out of town next week but Mike French could take care of the transfer of securities.

Regards,

*Sharyl Robertson*  
Sharyl Robertson

cc: Michael French

Attachments: Photomatrix Corporation certificate # 89 for 238,767 shares

EBR 3330,781 - \$ K  
\$570,660 - MIC

EBR 3260,045 - \$ K  
\$161,868 - E K

Permanent Subcommittee on Investigations

EXHIBIT #11a

CONFIDENTIAL  
PSI00118984

Q DWIGHT & H. JACKSON  
CORPORATION SUPPLY CO.  
CHICAGO, ILLINOIS 60606

( RESERVE THIS SPACE TO PASTE BACK CANCELLED STOCK CERTIFICATE )

IF NOT AN ORIGINAL ISSUE SHOW DETAILS OF TRANSFER BELOW		Original Certificate No.	Acquired Date	No. of Shares Transferred
Certificate No.	105	For	238,767	Shares
PHOTOMATRIX CORPORATION				
Issued to	Digital 11/9/92 19			
TENSAS LIMITED				
LOREN HOUSE TRUST LTD				
CASTLETOWN, ISLE OF MAN,				
BRITISH ISLES				
If this certificate is surrendered for transfer show details				
Received this Certificate	136	Shares	1993	
Surrendered this Certificate				
19				

CONFIDENTIAL  
PSI00118985

Michael C. French, Esq.,  
Jackson & Walker L.L.P.,  
901 Main Street, Suite 6000,  
Dallas,  
Texas 75202-3797.

October 12th, 1992.

Photomatrix Corporation

Sharyl Robertson faxed the Committee of Protectors recommendation that the Bulldog and Pitkin trusts should buy shares in the above corporation on Friday, after our working hours. She also said that she would be out of her office all this week.

While we have the greatest admiration for the Protectors' advice, an additional burden of responsibility is thrown upon us when the suggestion is made that we should buy securities from the Settlers. We cannot find that a market quotation for Photomatrix. While we do not wish to suggest that 12 cents is a wrong price, we do need something for our records to show that it was a fair one.

We would also like to know the registered address of Photomatrix, in case - having bought stock - we do not receive information to which we would be entitled as shareholders.

Trusting that this information can be supplied, you should know that the Pitkin Trust would wish to purchase through Roaring Creek Limited while the Bulldog Trust would use Tensas Limited. Payment would come via Chemical Bank in New York.

Changing subject, I shall be in Dallas on the night of Thursday, October 29th, and would be happy to devote all the next, Friday, morning to Messrs. Charles and Sam Wyly's affairs. I fly out at lunch time.



R. Buchanan.

Permanent Subcommittee on Investigations

EXHIBIT #11b

CONFIDENTIAL  
PSI00128344

(6)  
MORGAN, LEWIS & BOCKIUS

**MEMORANDUM**

TO: Michael French      DATE: February 15, 1994  
FROM: Charles G. Lubar *CHL*  
SUBJECT: Tax Consequences of Grantor Trust

You have asked me to prepare a memorandum regarding the U.S. federal income tax treatment of U.S. citizen beneficiaries ~~(the "Taxpayers")~~ of foreign (i.e., non-U.S.) "grantor trusts" (the "Trusts") established by an individual (the "Grantor") who is a nonresident alien of the United States. For purposes of this memorandum, you told me to assume the following facts:

**FACTS AND ASSUMPTIONS**

1. The Grantor, although not related to the Taxpayers, has known the Taxpayers for a considerable period of time and will establish the Trusts for the Taxpayers' benefit as an entirely gratuitous act. All moneys contributed to the Trusts, now or in the future, will belong to the Grantor, and he has not previously and will not in the future receive any consideration, reimbursement, or other benefit for, or in respect of, this act, directly or indirectly. Further, the Taxpayers have not previously made gifts to the Grantor exceeding US\$10,000 in any taxable year.

2. The Trusts have been established in the Isle of Man as typical discretionary trusts. Under their terms, the trustee (the "Trustee") has been given broad powers to manage and dispose of the Trusts' principal and income, subject, in most cases, to the consent of a protector (the "Protector"). Neither the Trustee nor the Protector is a beneficiary of the respective Trusts.<sup>1/</sup> The Trusts are irrevocable but may be modified by the Trustee in certain respects, including the naming of additional beneficiaries.

3. The Trusts will acquire a majority share interest in a non-U.S. corporation ("Newco") organized to engage in, inter alia, the insurance business, exclusively outside the United States. Neither the Taxpayers nor any persons related to the Taxpayers, directly, indirectly or constructively, will transfer

<sup>1/</sup> It is noted that if a party is a Protector, it would be for a Trust for which he is not a beneficiary.

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Permanent Subcommittee on Investigations

**EXHIBIT #12**

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any money or other property to Newco except on an "arm's length" basis,<sup>2/</sup> and if the Taxpayers provide services to Newco as employees, independent contractors or otherwise, directly or indirectly, they will be compensated solely on an arm's length basis.

#### DISCUSSION

##### 1. Consequences During Grantor's Lifetime

Because of the broad discretionary powers afforded to the Trustee and the fact that the Grantor is also a beneficiary of the Trusts, the Trusts will be "grantor trusts" for all U.S. federal income tax purposes pursuant to the provisions of sections 671 et seq. for so long as the Grantor lives. As a consequence, the Grantor will be considered to be the owner of the portion of the Trusts (including the shares of Newco) attributable to the property that he transfers to the Trusts, and all items of income, deduction or credit attributable to such portion will be included in computing the Grantor's taxable income and credits for U.S. federal income tax purposes.

However, because the Grantor is a nonresident alien as to the United States and neither the Trusts nor Newco will have any income from U.S. sources or effectively connected with the conduct of a U.S. trade or business, the Grantor will have no actual U.S. tax liability or obligation to file a U.S. income tax or information return.

In the assumed circumstances, the Grantor will be the sole transferor of property to the Trusts and will, accordingly, be treated as owner of all the interests in the Trusts. Thus, all income of the Trusts will be notionally taxed to the Grantor for U.S. federal income tax purposes, and the Taxpayers, U.S. citizen beneficiaries of the Trusts, will not be subject to U.S. tax on any distributions received from the Trusts that are attributable to income realized by the Trusts during the Grantor's lifetime. Rev. Rul. 69-70, 1969-1 C.B. 182. Further, because the Grantor will be treated as owner of the shares of Newco held by the Trusts, the Taxpayers will not be considered to own any shares thereof for purposes of the provisions applicable to "controlled foreign corporations" ("CFC")<sup>3/</sup> or "foreign

<sup>2/</sup> For this purpose, a transfer is considered to be "arm's length" if undertaken on terms, including financial terms, that would be made between wholly unrelated persons in comparable circumstances.

<sup>3/</sup> PLR 670419560A (April 19, 1967). See Code §§ 318(a)(2)(B)(ii), 958(b); Reg. § 1.958-2(c)(1)(ii).

personal holding companies" ("FPHC")<sup>4/</sup> and likely will not be considered to own any shares of Newco for purposes of the "passive foreign investment company" ("PFIC") provisions.<sup>5/</sup> Thus, the Taxpayers should not have any current U.S. tax liability or reporting obligations in respect of income realized by Newco during the Grantor's lifetime (other than compensation that the Taxpayers may receive from Newco, directly or indirectly, for services performed on its behalf).

## 2. Consequences Following Grantor's Death

Following the death of the Grantor, the Trusts will no longer be grantor trusts for U.S. federal income tax purposes, and the Taxpayers, as beneficiaries of the Trusts, will become subject to the normal rules regarding the taxation of income received through interests in foreign trusts and certain foreign corporations.

### (a) Income from Foreign Trust

Income and gains accumulated by the Trusts prior to the death of the Grantor may be distributed to the Taxpayers following the Grantor's death free of U.S. tax, since such income already will have been notionally taxed to the Grantor. However, income and gains realized by the Trusts following the Grantor's death will be taxable to the Taxpayers when distributed to them.<sup>6/</sup>

<sup>4/</sup> Rev. Rul. 79-116, 1979-1 C.B. 213.

<sup>5/</sup> At the present time, Prop. Reg. § 1.1291-1(b)(8)(i)(C) provides that beneficiaries of a trust (other than a tax-exempt employees' trust) are considered to own a proportionate amount of stock of a PFIC owned by the trust, directly or indirectly. However, similar language pertaining to CFCs and FPHCs has been interpreted not to apply to stock held through a grantor trust. See authorities cited at footnotes 3 and 4, *supra*. Further, the instructions to Form 8621, the annual return for direct and indirect shareholders of a PFIC, indicate that the grantor of a grantor trust, and not the trust itself, is treated as the owner of PFIC stock held by a grantor trust. This implies that other beneficiaries of such a trust would not be treated as indirect owners of the PFIC. Moreover, the IRS, in a notice of proposed amendments to the PFIC regulations, issued April 1, 1992, solicited comment from taxpayers on whether different attribution rules should be adopted.

<sup>6/</sup> Because the Trusts generally will keep their books on a receipts basis, it will be beneficial for the Taxpayers if Newco distributes its profits to the Trusts by way of dividend currently. Dividends received by the Trusts during the Grantor's



If distributed in the year realized by the Trust, such income and gains will retain their character and be taxed to the Taxpayers at the current rates applicable to ordinary income and capital gains, respectively. However, if the Trusts accumulate income and gains following the Grantor's death, this will result in several adverse consequences to the Taxpayers. First, under a complex set of rules contained in section 667, the amount received by the Taxpayers as an accumulation distribution effectively will be "thrown back" to the years when such income was earned by the Trusts and taxed at the Taxpayers' highest marginal rate for such years.<sup>1/</sup> Second, the character of capital gains realized by the Trusts will be lost when distributed to the Taxpayers, and they will be subject to tax on such gains at current rates applicable to ordinary income, which generally are higher than rates applicable to capital gains. Finally, under section 668, a nondeductible interest charge of six percent per annum will be imposed on the deferred taxes attributable to the accumulation distribution (adjusted for any foreign tax credits available to the Taxpayers).<sup>2/</sup> Thus, unless the economic benefits of tax deferral outweigh the section 668 interest charge, it normally would be recommended that the Trusts make current distributions of income and gains to the Taxpayers following the death of the Grantor.

(b) Income from Newco

A U.S. person owning shares, directly or indirectly (including, e.g., through a beneficial interest in a foreign trust), in a foreign corporation that is a CFC or FPHC may be subject to U.S. income tax currently on certain income realized

lifetime will be taxed to him and not to the Taxpayers, who may later receive distributions incorporating such dividends on a tax-free basis. By comparison, dividends received by the Trusts from Newco following the Grantor's death will eventually be taxable to the Taxpayers notwithstanding that the profits from which such dividends are paid were earned by Newco prior to the Grantor's death.

7/ The amount of the actual distribution will be grossed up for any foreign taxes which such income has borne in the hands of the Trusts, and the Taxpayers will be entitled to a limited foreign tax credit for such taxes in computing their U.S. tax liability on the accumulation distribution. However, in the envisioned circumstances, it is unlikely that the Trusts will pay any foreign taxes.

8/ The total of the interest charge plus the tax incurred may not exceed the amount of the actual distribution. Although the section 668 interest charge is itself nondeductible, it is subject to a further interest charge in case of late payment.

by the corporation, whether or not such income is received by the U.S. person. Similarly, a U.S. person owning or considered as owning shares in a foreign corporation which is a PFIC may suffer adverse U.S. tax consequences on the receipt of certain excess distributions from the corporation or proceeds from the sale of its stock.

Following the death of the Grantor, Newco will likely be a CFC and, depending on the mix of assets or income, may also meet the definition of a FPHC or a PFIC. Discussion of the consequences of Newco becoming a CFC, a FPHC or a PFIC is beyond the scope of this Memorandum. In general, however, it should be noted that to the extent Newco earns active business income it may be able to avoid the adverse tax consequences of being a CFC or a FPHC. Avoiding the consequences of being a PFIC, however, will depend not only on the active level of business income but on the percentage of assets deemed to be in this active business.

(c) Reporting of Interests in Newco

A U.S. person who (i) "acquires" five percent or more in value of the stock of a foreign corporation, (ii) acquires an additional five percent of such stock, (iii) owns five percent or more of the stock of a foreign corporation when such corporation is reorganized, or (iv) disposes of sufficient shares to reduce his interest to less than five percent of the foreign corporation is required to report his interest in the foreign corporation on Form 5471. The relevant statutory provision, section 6046, indicates that stock owned directly or indirectly must be reported. In implementing this provision the regulations state that persons owning shares directly or indirectly through a foreign corporation or foreign partnership must report their proportionate interest of a foreign corporation's shares held by such corporation or partnership. Reg. § 1.6046-1(h)(1). On the death of the Grantor it is likely that the beneficiaries of the respective Trusts will be deemed to "acquire" the requisite five percent or more interest, thus requiring the filing of information returns on Form 5471. Further, since Newco will likely be a CFC and may be a FPHC, then in either case there would be significant additional information required on Form 5471 beyond the minimal information required for a five percent or more shareholder.

A U.S. person holding a direct or indirect interest in a PFIC, including an interest held through a beneficial interest in a trust, must file an annual information return on Form 8621. Thus, if Newco were to become a PFIC following the Grantor's death, the Taxpayers would be required to file such a return.

MGP:CGL:mclw

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Mike French, Esq.,  
 Maverick,  
 8080 N. Central Expressway,  
 Dallas,  
 TX 75206.

March 1st, 1995.

Fax to: 010 1 214 891 8245

**The Scottish Annuity Company (Cayman) Ltd.**

thank you for your fax last night.

Where Keith and I are concerned with respect to the above company, we feel that we are being asked to put our heads on the block without having much compensation. The potential risk to our reputation is much the more important aspect as far as we are concerned. If it turned out that our agents in Cayman had been fraudulent, or merely negligent, and we as Managing Directors had failed to keep an careful eye on matters then our very livelihoods would be at risk.

Quite frankly, we were not impressed by Roger Phelps' idea of a quarterly report. As and when the new man is in place - and it might have been better had we been more involved in the decision to appoint him - we will hope to receive quarterly or monthly analyses of income, expenditure and cash position with comparisons against budget, the previous quarter and, in due course, the equivalent quarter in the previous year and so on. Being able to telephone you or Shawn is not the same thing, as doing so leaves no record that we made sure that we were kept abreast of affairs.

Two bits of recent news are relevant here; one well known, the other not. The notorious one is the ability of one dishonest man in a distant office to bring down a banking dynasty, *Baring Brothers* (my brother's in-laws), because people who should have supervised him were not asking the right questions. The unknown one is that Lorne House Trust, as a trustee, is fighting the IRS in Northern California where the IRS is contending that a corporation owned by the (foreign) trust is the mere 'alter ego'

Permanent Subcommittee on Investigations

**EXHIBIT #13**

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of the Settlor, even though I can assure you that the settlor in question has been far more willing to leave us in genuine control - a fact which promises to win us the case - than S. appears to be.

On the slightly less important matter of rewards, we were glad to read that you might be able to point some significant business in our direction. Thanks for thinking of us;

R. Buchanan.

CONFIDENTIAL  
PSI00120864

**FAX TRANSMITTAL****Maverick**

TO: Shaun Cairns FROM: Michael C. French  
COMPANY: Wychwood Trust Limited PHONE: 214 891 8350  
PHONE: 44 1624 824011 FAX: 214 891 8311  
FAX: 44 1624 824 070 DATE: October 3, 1995  
NUMBER OF PAGES (including cover): 12 TIME: 10:56 AM

**COMMENTS:**

Shari Robertson and I have reviewed the copies of the two trusts you faxed to us. There are some clerical errors that must be remedied. I assume the documents can be redone to reflect these corrections.

It is essential that these corrections be made. It is my understanding that there is a letter of wishes similar to that given by the settlor of the Tyler and Beattie trusts administered by Lorne House. It was also my understanding from Ronald Buchanan that these trusts were to be funded in the manner set forth in the attachments. He can call me if he needs further advice on this.

Please see to it these corrections are effected as soon as possible. Thank you for your assistance.

Maverick Capital • 8080 North Central Expressway • Suite 1300 • LB-31 • Dallas, Texas 75206-1895

Permanent Subcommittee on Investigations

EXHIBIT #14

PSI-WYBR 00296

752

6245

10TH FLOOR

F-387 1-644 P-002

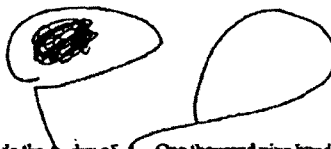
UCL 03 30 10-60

**The Red Mountain Trust**

DET W/VD 00007

10TH FLOOR

F-387 1-b44 1-003

*Amend date →*

THIS DEED OF SETTLEMENT is made the 25 day of June One thousand nine hundred and ninety-five by Shaun F Cairns (hereinafter called the "Settlor") of the one part and Wychwood Trust Limited a company incorporated and existing in the Isle of Man and having its registered office at 1 The Parade, Castletown, Isle of Man, British Isles (hereinafter called the "Original Trustee") of the other part.

## WHEREAS:

*Twenty five thousand*

- A. The settlor has paid or caused to be paid the sum of ~~one hundred~~ dollars in the currency of the United States to the Original Trustee for the purpose of constituting the trusts and subject to the terms and conditions herein contained.
- B. It is anticipated that further monies invested and/or other property may be paid or transferred to or become held by the Trustee (whether by gift inter vivos testamentary disposition or otherwise) upon the said trusts.

## NOW THIS DEED WITNESSETH as follows:

## 1. Definitions

In this Deed of Settlement where the context so admits:

- (1)
  - (a) The singular number includes the plural number and vice versa:
  - (b) The masculine gender includes the feminine gender and vice versa: and
  - (c) The neuter gender includes the masculine gender and the feminine gender and vice versa.
  - (d) "persons" include corporations
  - (e) "Clause" and "Schedule" are references to the Clauses of and Schedules to this Deed of Settlement.
  - (f) Unless otherwise stated "sub-clauses" are references to sub-clauses of the Clause in which the reference appears and "paragraphs" are references in which the reference appears.
- (2) The following expressions shall bear the following respective meanings:
  - (a) "Trustees" means the Original Trustee and/or other trustee or trustees for the time being of this Settlement.
  - (b) "Trust Fund" means the said sum of one hundred U.S. dollars

*Page 1*

(US \$100.00) so paid to the Original Trustee as aforesaid and all other (if any) capital monies and investments or other property real or personal which may at any time hereafter be paid to or transferred into the names or under the legal control of the Trustees to be held upon the trusts hereof or which may at any time hereafter in any other manner become subject to the trusts hereof and the property from time to time representing the same respectively.

(c) "Trust Period" means the period beginning on the date of this Settlement and ending:

(i) ~~the period of eight years from the execution hereof~~

(ii) on such earlier date (if any) as the Trustees subject to the prior written consent of the Protector shall by irrevocable instrument in writing declare (not being a date earlier than the date of the execution of such instrument).

(d) "Excepted Person" means and includes Michael C French, Sharyl Robertson and Sam Wylly anyone resident for the time being in the Isle of Man. and shall also mean and include any person whom the Trustees with the prior written consent of the Protector shall have declared to be a member of the class of Excepted Persons in exercise of the powers conferred on them by sub-clause 3(2).

(e) "Beneficiary" or "Beneficiaries" means and includes the person specified in the Third Schedule hereto and any person or persons and charity and charities whom the Trustees shall within the Trust Period with the prior written consent of the Protector have duly appointed and directed to be included (whether individually or as a member of a class) in the class of Beneficiaries in exercise of the powers conferred on the by Clause 3(1).

PROVIDED ALWAYS that:

(1) In determining whether or not a person is a Beneficiary and for all other purposes of this Deed of Settlement:

(aa) an adopted or legitimated person (whether now or hereafter adopted or legitimated) shall be treated as the child of his adoptive or legitimated parents and of no other person; and

bb) an illegitimate person shall not (unless and until adopted or legitimated) be treated as the child of any person PROVIDED THAT the Trustees shall have power with the prior written consent of the Protector at any time and from time to time by irrevocable instrument in writing executed during the Trust period to appoint and direct that any person being illegitimate who would be a beneficiary if he were the lawful child of his natural parents shall thenceforth be included in the class of Beneficiaries.

Page 2



(b) "Trust Fund" means the properties listed and described on the Schedule of Assets attached hereto so paid to the original Trustees as aforesaid and all other (if any) capital monies and investments or other property real or personal which may at any time hereafter be paid to or transferred into the names or under the legal control of the Trustees to be held upon the trusts hereof or which may at any time hereafter in any other manner become subject to the trusts hereof and the property from time to time representing the same respectively.

(c) "Trust Period" means the period beginning on the date of this Settlement and ending:

(i) on the later of (x) the period commencing on the date hereof and expiring twenty-one (21) years from the death of the last survivor of such of the lineal descendants, male and female, of King George the Sixth of England as are living at the date hereof or (y) such longer period as may be permitted by the laws of the jurisdiction of this Trust; or

(ii) on such earlier date (if any) as the Trustees subject to the prior written consent of the Protector shall by irrevocable instrument in writing declare (not being a date earlier than the date of the execution of such instrument).

(d) "Excepted Person" means and includes the Protectors set forth in the Fourth Schedule and shall also mean and include any person whom the Trustees with the prior written consent of the Protector shall have declared to be a member of the class of Excepted Persons in exercise of the powers conferred on them by Clause 3(2).

(e) "Beneficiary" or "Beneficiaries" means and includes the person or persons specified in the Third Schedule hereto and all persons whom the Trustees shall within the Trust Period with the prior written consent of the Protector have duly appointed and directed to be included (whether individually or as members of a class) in the class of Beneficiaries in exercise of the powers conferred on them by Clause 3(1).

PROVIDED ALWAYS that:

1) in determining whether or not a person is a Beneficiary and for all other purposes of this Deed of Settlement:

*Insert*

*Martha Wyly Miller*

*Charles J.*

*Jr.*

*himself*

#### THE FOURTH SCHEDULE

(The provisions referred to in Clause 23 relating to the Protector)

- him*
- (1) Michael C French and Sheryl Robertson shall act as the Protectors or, if either of them is not then living or incapable or unwilling to act, the other shall act as the sole Protector or, if neither of them is then living or capable or will to act, ~~Charles J. Wyly~~ shall act as the sole Protector or, if he is not then living or incapable or unwilling to act, ~~Sam~~ Wyly shall have the power to appoint one or more additional or successor Protectors to act hereunder other than himself, his wife or his lineal descendants or, if he is not then living or incapable to act, ~~Edward A. Wyly~~ shall have the power to appoint one or more additional or successor Protectors to act hereunder other than himself, his wife or his lineal descendants or, if ~~Edward A. Wyly~~ is not then living or incapable to act, the Protector acting hereunder shall have the power to appoint his own successor to act as Protector hereunder. *her* *same*
  - (2) Subject to sub-paragraph (a) of paragraph (5) where two persons are appointed to act as Protector of this Deed of Settlement the powers conferred on the Protector by the provisions of this Deed of Settlement shall be exercised by such person jointly only but where more than two persons are appointed to act as Protector such powers may be exercised by a majority without consulting the minority (and so that where the consent of the Protector is required by any provision of this Deed of Settlement it shall be sufficient for the Trustees to consult and to obtain the consent of the majority of the persons occupying such office).
  - (3) Any consent required to be given by the Protector may be given generally or for any period of time or subject to such restrictions or limitations as he may think fit and may from time to time be revoked or varied (but so that no such revocation or variation shall affect the validity or propriety of any act done or omission made by the Trustees in reliance upon any such consent before receipt by them of written notice of such revocation or variation).
  - (4) A Protector, shall be deemed to be incapable if he is determined to be incapable of managing his own affairs by reason of age mental or physical illness or otherwise by any order decree or declaration of any court tribunal or administrative body having jurisdiction to make such determination or if the Trustees shall determine the Protector to be incapable and the words "incapable" and "incapacity" shall be construed accordingly.
  - (5) (a) If at any time when there shall be two or more persons occupying the office of Protector the Trustees shall reasonably consider that one or more (but not all) of such person (each a "person affected") is incapable or is unable of his own free will to exercise his power to give or withhold consent to any act of the Trustees then where the consent of the Protector is required by any provision of this Deed of Settlement it shall be sufficient for the Trustees to consult and to obtain the

*Red Mountain 4th Schedule*

757

10TH FLOOR

F-387 T-644 P-007

U.S. \$ 25,000.00

SCHEDULE OF ASSETS

1. U.S. \$100,000

25,000.00

758

10TH FLOOR

F-387 T-644 P-888

OCT 03 '95 18:38

**The Lafourche Trust**

01624824878 P.02

INCHWOOD TRUST LIMITED

03-OCT-1995 14:53

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PSI-WYBR 00388

10TH FLOOR

F-387 T-644 P-009

OCT 03 '95 10:30

*Handwritten signature**Handwritten signature*

THIS DEED OF SETTLEMENT is made the 24 day of October One thousand nine hundred and ninety-five by Shaun F Cairns (hereinafter called the "Settlor") of the one part and Wychwood Trust Limited a company incorporated and existing in the Isle of Man and having its registered office at 1 The Parade, Castletown, Isle of Man, British Isles (hereinafter called the "Original Trustee") of the other part.

## WHEREAS:

*Twenty four thousand*

- A. The settlor has paid or caused to be paid the sum of ~~one hundred~~ dollars in the currency of the United States to the Original Trustee for the purpose of constituting the trusts and subject to the terms and conditions herein contained.
- B. It is anticipated that further monies invested and/or other property may be paid or transferred to or become held by the Trustee (whether by gift inter vivos testamentary disposition or otherwise) upon the said trusts.

## NOW THIS DEED WITNESSETH as follows:

## 1. Definitions

In this Deed of Settlement where the context so admits:

- (1) (a) The singular number includes the plural number and vice versa;
- (b) The masculine gender includes the feminine gender and vice versa; and
- (c) The neuter gender includes the masculine gender and the feminine gender and vice versa.
- (d) "persons" include corporations
- (e) "Clause" and "Schedule" are references to the Clauses of and Schedules to this Deed of Settlement.
- (f) Unless otherwise stated "sub-clauses" are references to sub-clauses of the Clause in which the reference appears and "paragraphs" are references in which the reference appears.
- (2) The following expressions shall bear the following respective meanings:
- (a) "Trustees" means the Original Trustee and/or other trustee or trustees for the time being of this Settlement.
- (b) "Trust Fund" means the said sum of one hundred U.S dollars

*Handwritten signature*

01624824878 P. 03

WYCHWOOD TRUST LIMITED

03-OCT-1995 14:53

PSI-WYBR 00304

(US \$100.00) so paid to the Original Trustee as aforesaid and all other (if any) capital monies and investments or other property real or personal which may at any time hereafter be paid to or transferred into the names or under the legal control of the Trustees to be held upon the trusts hereof or which may at any time hereafter in any other manner become subject to the trusts hereof and the property from time to time representing the same respectively.

(e) "Trust Period" means the period beginning on the date of this Settlement and ending:

*hereby* ~~the period of eighty years from the execution hereof~~

(ii) on such earlier date (if any) as the Trustees subject to the prior written consent of the Protector shall by irrevocable instrument in writing declare (not being a date earlier than the date of the execution of such instrument).

(d) "Excepted Person" means and includes Michael C French, Sharyl Robertson and Charles J Wyly, Jr. anyone resident for the time being in the Isle of Man and shall also mean and include any person whom the Trustees with the prior written consent of the Protector shall have declared to be a member of the class of Excepted Persons in exercise of the powers conferred on them by sub-clause 3(2).

(e) "Beneficiary" or "Beneficiaries" means and includes the person specified in the Third Schedule hereto and any person or persons and charity and charities whom the Trustees shall within the Trust Period with the prior written consent of the Protector have duly appointed and directed to be included (whether individually or as a member of a class) in the class of Beneficiaries in exercise of the powers conferred on the by Clause 3(1).

PROVIDED ALWAYS that:

(1) In determining whether or not a person is a Beneficiary and for all other purposes of this Deed of Settlement:

(aa) an adopted or legitimated person (whether now or hereafter adopted or legitimated) shall be treated as the child of his adoptive or legitimated parents and of no other person; and

bb) an illegitimate person shall not (unless and until adopted or legitimated) be treated as the child of any person PROVIDED THAT the Trustees shall have power with the prior written consent of the Protector at any time and from time to time by irrevocable instrument in writing executed during the Trust period to appoint and direct that any person being illegitimate who would be a beneficiary

*Page 2*

- (b) "Trust Fund" means the properties listed and described on the Schedule of Assets attached hereto so paid to the original Trustees as aforesaid and all other (if any) capital monies and investments or other property real or personal which may at any time hereafter be paid to or transferred into the names or under the legal control of the Trustees to be held upon the trusts hereof or which may at any time hereafter in any other manner become subject to the trusts hereof and the property from time to time representing the same respectively.
- (c) "Trust Period" means the period beginning on the date of this Settlement and ending:

*insert* →

- (i) on the later of (x) the period commencing on the date hereof and expiring twenty-one (21) years from the death of the last survivor of such of the lineal descendants, male and female, of King George the Sixth of England as are living at the date hereof or (y) such longer period as may be permitted by the laws of the jurisdiction of this Trust; or

- (ii) on such earlier date (if any) as the Trustees subject to the prior written consent of the Protector shall by irrevocable instrument in writing declare (not being a date earlier than the date of the execution of such instrument).
- (d) "Excepted Person" means and includes the Protectors set forth in the Fourth Schedule and shall also mean and include any person whom the Trustees with the prior written consent of the Protector shall have declared to be a member of the class of Excepted Persons in exercise of the powers conferred on them by Clause 3(2).
- (e) "Beneficiary" or "Beneficiaries" means and includes the person or persons specified in the Third Schedule hereto and all persons whom the Trustees shall within the Trust Period with the prior written consent of the Protector have duly appointed and directed to be included (whether individually or as members of a class) in the class of Beneficiaries in exercise of the powers conferred on them by Clause 3(1).

PROVIDED ALWAYS that:

- 1) in determining whether or not a person is a Beneficiary and for all other purposes of this Deed of Settlement:

*Insert*

## SCHEDULE OF ASSETS

1. U.S. \$125,000

25,000,00



763

**WYCHWOOD TRUST LIMITED**

**FACSIMILE TRANSMISSION**

TO : Maverick Capital      DATE: 17 October 1995  
FROM : Shaun F Cairns  
FAX REF. : WTL 376/95  
FAX NO. : 00 1 214 891 8245  
ATTENTION : Michael French  
NUMBER OF PAGES INCLUDING THIS PAGE : 57

We are transmitting on facsimile number 01624 824070.(International Code 44 1624). If you do not receive this message completely please contact us on telephone number 01624 824011.

Re:- Lafourche and Red Mountain

Sorry for the delay in sending you the attached. We have made additional changes to the 4th Schedule of Lafourche - see under point 1. The genders were a bit mixed up. Could you please let me have your views before I have them signed up and dated. (Back dated). I have had a chat to Ronnie regarding the reimbursement of the \$50 000 and he has asked me to refer the matter directly to you. Could you please check with Shari whether the breakdown of costs that I gave her were acceptable and thereafter I will send you a fee note.

Kind regards



Permanent Subcommittee on Investigations

**EXHIBIT #15**

PSI-WYBR 00398

**FAX TRANSMITTAL****Maverick**

TO: David Bester FROM: Shari Robertson  
COMPANY: Trident Trust PHONE: (214) 880-4050  
PHONE: 011 44 1624 677055 FAX: (214) 880-4052  
FAX: 011 44 1625 620588 DATE: August 27, 1997  
NUMBER OF PAGES (including cover): TIME: 4:10 PM

**COMMENTS:**

Sam Wyly has executed a Letter of Wishes on behalf of the LaFourche Trust. A copy is being forwarded with this facsimile and the original is following by courier. If you would like to discuss the recommendations in the Letter of Wishes with Mike and me, please give us a call.

Copy: Michelle Boucher

Maverick Capital • 300 Crescent Court • Suite 1850 • Dallas, Texas 75201

Permanent Subcommittee on Investigations  
**EXHIBIT #16**

CONFIDENTIAL

Mike French, Esq.,  
Maverick,  
8080 N. Central Expressway,  
Dallas,  
TX 75206.

March 7th, 1995.

Fax to:

Redacted by the Permanent  
Subcommittee on Investigations

**Bulldog & Plaquemines Trusts**

Bulldog will settle Plaquemines, in the words which you suggested.

Since the purpose of the exercise, as I understand it, is to divide the ownership of Sterling Software we need to split ownership of the underlying companies which own SS between the two trusts. That was the purpose of Barbara's fax of yesterday.

R. Buchanan.

Permanent Subcommittee on Investigations

**EXHIBIT #17a**

CONFIDENTIAL  
PSI00120859

766

Attn: Mike French, Esq.,  
Maverick

March 6th, 1995.

From: Barbara Rhodes  
Lorne House Trust Limited.

1 Page Fax

**Sterling Software**

Thank you for your fax dated March 3rd.

We intend to transfer **East Carroll Limited** and **East Baton Rouge Limited** from Bulldog to Plaquemines, this would mean that Plaquemines would hold 350,000 shares and Bulldog would hold 644,725 shares of Sterling Software.

Best regards,



Barbara Rhodes.

Permanent Subcommittee on Investigations

**EXHIBIT #17b**

CONFIDENTIAL  
PSI00120860



To: AJB, JKB, Shaun Cairns, RJC, FKVC, DJ, JEP, BAR

16th August, 1995.

From: RB

**Plaquemines, Delhi, Assumption & Pueblo Trusts**

Shari Roberston, who administers the Wyly Brothers' affairs from Dallas, rang yesterday afternoon BST to say that Mike French - presumably on Sam's prompting - does not wish to await John Willis's return to set up the Assumption and Pueblo Trusts or AJB's arrangement of a new credit line with which to buy options on Sterling Software. They will, instead, use the existing facilities with Lehman Brothers in Dallas and Wychwood as trustee.

We have available Elysium Limited to be owned by the Assumption Trust (where Sam will nominate the initial beneficiaries) and Atlantis Limited to be owned by the Pueblo Trust (ditto Charles). FKVC is asked to alter the draft trust documents to reflect the change of trustee to Wychwood and SFC is asked to accept trusteeship.

Wychwood must not be trustee of two sets of trusts which are buying options simultaneously since the amount involved would trigger a reporting requirement. We have been asked, therefore, to transfer the trusteeship of the Plaquemines and Delhi Trusts from Wychwood to a temporary trustee and from the temp. to John Willis once he has returned. I offered to be the temporary trustee in a personal capacity but Mike French thought that I was unsuitable in that I control the corporate trustee of the Bulldog and Pitkin Trusts. He asked if JKB would be willing to serve.

FKVC is asked to prepare deeds of resignation and appointment of trustees from Wychwood to JKB for the Plaquemines and Delhi Trusts and JKB is asked to accept temporary trusteeship.

The Wyls would still like to arrange financing similar to that which has been arranged with Lehman Brothers but from another bank.

Permanent Subcommittee on Investigations

**EXHIBIT #17c**

CONFIDENTIAL  
PSI00118019

A. J. Buchanan,  
Hillbarn House,  
Great Bedwyn,  
Wiltshire SN8 3NU

*Handwritten notes:*  
Judy  
Wally Smith SLT  
SWS  
Wally Smith SLT  
Wally Smith SLT  
Wally Smith SLT

*Handwritten initials:* AC

uchers

Sam and Ch wish to arrange a bank borrowing to finance the purchase of a large number of call options on Sterling Software shares. I would be grateful if you could find a bank in London which would be interested in the business (keeping careful note of your time spent and expenses incurred). The pattern will be exactly the same as for the same exercise which we recently completed with Lehmann Brothers in Dallas. The new purchase will be in the name of two new trusts which we are establishing and which will have separate trustees. The Wyls, who are officers of and shareholders in SS, have been advised that, in consequence, there is no reporting requirement under SEC regulations, such as there would have been had all their potential interests been aggregated.

I will leave this note to ask Barbara to check with you where she should send the documentation for the last loan/option package, always supposing that you will be in London next week. She can also tell you which bank Mike French thinks you might approach first: I think it was Credit Suisse First Boston, but cannot verify that on this Saturday morning. I shall be in Ireland until Monday evening.

We have all much enjoyed reading your account of your march in Holland; as great a literary feat as it had earlier been a physical one.

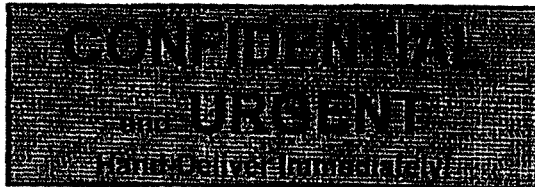
*Handwritten initials:* wf

R. Buchanan.

Permanent Subcommittee on Investigations

EXHIBIT #17d

CONFIDENTIAL  
PSI00117994

**FAX TRANSMITTAL****Maverick**

001214 891 8350.

**TO: Ronald Buchanan****FROM: Mike French****COMPANY: Lorne House Trust****PHONE:****PHONE:**Redacted by the Permanent  
Subcommittee on Investigations**FAX:****FAX:****DATE: July 10, 1995****NUMBER OF PAGES (including cover):****TIME: 2:07 PM****COMMENTS:**

NORBA LIMITED  
SEAGULL LIMITED  
NEWTON LIMITED  
ELEGANCE LIMITED

Dear Ronnie:

Please dispose of this fax after reading, as there will be ample documentation as needed.

It is expected that a recommendation will be made to Wychwood that the Plaquemines Trust, and another trust settled with Wychwood by Pitkin, should contact Lehman regarding acquiring call options on SSW, probably for about two years at the market. Wychwood would finance the transaction through loans, from Lorne House entities. It is likely that a portion of the price could be financed through Lehman.

It may be that, as an alternative, there will be two new trusts at Wychwood established by Keith that will mirror the Bessie and Tyler trusts. This would require Keith to contribute some funds to the trust, but presumably there is a source for that. If this structure is used, the same financing structure for the calls would be utilized.

Wychwood would, in either case, be limited to approximately 600,000 to 700,000 calls, in order to stay under 5% of the outstanding shares and avoid SEC reporting.

I am also sending a copy of this fax to Shaun Cairns, with the same request that he read it and then dispose of it. I will be back on this soon, perhaps tonight.

Maverick Capital • 8080 North Central Expressway • Suite 1300 • LB-31 • Dallas, Texas 75206-1895

10 000

Permanent Subcommittee on Investigations  
**EXHIBIT #18**

CONFIDENTIAL  
PSI00136718

CONFIDENTIAL

## MEMO

WYLY

To: <b>Sam, Charles, Evan &amp; Donnie</b>	From: <b>Shari Robertson</b>
Company:	Phone: <b>214 880 4050</b>
Phone:	Fax: <b>214 880 4052</b>
Fax:	Date: <b>November 20, 1997</b>
Number of pages: <b>1</b>	Time: <b>10:09 AM</b>
Re: Compensation and year-end bonus reviews	

I am attaching payroll information for the last three years for the family office staff. I have also completed an evaluation by employee and a recommendation for 1998 compensation and a 1997 bonus for those employees reporting to me. Michelle Boucher did the same type evaluation for the employees of Irish Trust and Scottish Annuity.

**Redacted By**  
**Permanent Subcommittee on Investigations**

In reviewing my situation with the Wyly family, I would ask that you consider a consulting bonus for 1997 from the Irish Trust Company (see Michelle's profile for the profit details) and on a going forward basis a monthly consulting fee. Sam also mentioned sometime ago that he would consider my trust owning at least 10% of Irish Trust Company. I would like you to re-consider the percentage of ownership and formalize the agreement. Additionally, I would like you to consider Michelle Boucher owning a small piece of Irish Trust Company ... I want to give her every reason to want to stay employed and involved with the Wyly Family for many years in the future.

I also need clarification whether Irish Trust should again this year charge the family trusts a special legal consulting fee to be paid out to Mike French of \$300,000 as we did last year. I would also like to point out that Mike didn't take this fee until 1997. The revenue charge to the trusts during 1997 was \$670,000 of which \$300,000 was a direct bill to the trusts to cover this payment to Mike. The balance was charged on a percentage basis as we discussed last year and appears to be adequate to cash flow the company.

SR 0001026

300 Crescent Court - Suite 1000 - Dallas, TX 75201 • 214/880-4050 • Fax 214/880-4052

Permanent Subcommittee on Investigations

EXHIBIT #19





"Michelle Boucher"  
<moucher@candw.ky  
>  
08/31/2001 11:36 AM

To: <shuebner@htst.com>, <swyly@htst.com>  
cc: <khennington@htst.com>, <shari\_robertson@maverickcap.com>, <evan\_wyly@maverickcap.com>  
Subject: URGENT email for Sam, we need a quick reply on this - thanks!

Sam,

Keeley and I need to touch base with you on a couple of things relating to the foreign trust system:

1. Withdrawal from Maverick Fund offshore to raise cash for other investments.

I received an email from Lee and Shari last night indicating that you thought the withdrawal of Maverick this month was going to be reinvested. This is not the case. As per the cash flow information we discussed on August 3rd, the Trustees have requested a withdrawal of \$30Million from the Scottish Annuity Policy. The withdrawal is being made in two stages - \$20Million at September 1st and \$10Million at October 1st. The Scottish Annuity policy will redeem their Maverick investment to raise cash. The cash will then be withdrawn from the Scottish Annuity Policy and transferred back to the trust. The trust will use this cash for various other purposes, such as acquiring Beverly Drive, investing in Ranger, Greenmountain and funding commitments to Red River and Winston Thayer and funding construction at Two Mile Ranch. As you are aware the cash reserves in the trusts have been considerably diminished, raising this cash will also replenish the 'working' cash balances for other unforeseen investments that may arise over the near term.

FYI, there has been no action to sell Michaels Stores shares from the offshore trust yet. A decision on whether to liquidate some of these holdings has been deferred at this time, but will be revisited when cash needs arise again.

2. Withdrawal from the Scottish Annuity Policy.

As indicated above, a decision was made to withdraw the Maverick Fund holdings that reside in the Scottish Annuity Policy and withdraw part of the policy. As discussed with you, this was arrived at for the following reasons:

- the Maverick investments held directly by the trusts (not in a Scottish Policy) are lower in dollar value and would easily be transferred as a block to Ranger when the need for additional Maverick holdings to keep Ranger's investment ratios in line is needed.
- advice was obtained from Rodney Owens last year indicating that he didn't feel the annuity gave the trust much additional tax advantage, and in the event that the trust was challenged having the annuity in place would be insignificant to the overall picture.
- the annuity policy was originally acquired, in part, to provide seed capital to Scottish's book of business which was no longer necessary
- cost of continuing to hold the annuity (although this is less of a concern now as fees were significantly reduced effective January 2001 to 10 basis points, which is approximately \$50K per year at this time)

The Trustees submitted the withdrawal request and initially Scottish Annuity agreed to the withdrawals. I had a couple of conversations with Scottish about this, but there was no real fuss made about it. However, this week, I received an email from Mike French which I found very offensive. Apparently

Permanent Subcommittee on Investigations

EXHIBIT #20

Confidential  
SEC\_ED00064869

DSI ED00064869

he had gone back to Rodney Owens to find out if he had been consulted on the withdrawal. Rodney allegedly denied being consulted, despite the advice he had given us last year (as you may recall the trustees requested full withdrawals of the policies for December 31st, 2000, which were subsequently withdrawn when Scottish agreed to lower their fees). Mike then contacted the trustees and indicated that he was aware that Rodney had not been consulted and that this decision was being made without proper legal advice and as far as he was concerned the withdrawal was a grave mistake. I have attached Mike's email to me, and to the trustees below. I have also included my response to Mike as an attachment to this email.

I feel that it was wholly inappropriate for Mike to initiate discussion on these matters with Rodney Owens, without consent of the family or the trustees, and I find it disturbing that Rodney has denied being consulted on this matter. I don't know in what capacity Mike felt he was communicating with the trustees, as he is no longer a protector and I am personally insulted at his implications that we/I would undertake any activities without receiving appropriate advice and proper consultation with the family members and trustees. I did respond to Mike, and have attached my email to him,

Now that I have finished ranting :-). .... in order to be certain that you are aware of the implications of surrendering the Scottish policy, I have outlined the issues again for you below. Keeley, Shari and I discussed this yesterday, and contacted Rodney Owens, who confirmed that the following is an accurate description of the issues. Please also review Mike's discussion as per his email which follows mine.

- The policy is owned by a 1992 trust, which is a Foreign Non-Grantor Trust. The trust income is currently not subject to US taxation, however, the trust converts to a taxable trust 2 yrs after your death.

- The annuity is providing value if this status is successfully challenged. If the trust is successfully challenged, taxes, interest and penalties could be levied on income earned by the trust within the statute period, which we can assume is 6 yrs.

- The annuity defers income, and assuming the annuity transaction is upheld, the annuity provides us with deferral of taxes, interest and penalties on income equal to the value of the policy at it's ultimate surrender date.

- This trust has over \$300M in assets, \$50M of which are in the annuity. It is only the \$50M in the annuity that we have the potential to defer tax, interest and penalties on. Income earned on the balance of assets in the trust, during the statute period, would be subject to tax, interest and penalties if the trust were successfully challenged.

- If we withdraw from the policy now, we are eliminating the potential deferral of taxes, interest and penalties on further income earned by these assets. We are also running the risk that if the trust is successfully challenged within the next 6yrs, the withdrawal amount could be assessed tax at ordinary income tax rates, interest and penalties. However, we do start the clock on running on the 6 yr statute for this lump sum being recognized as ordinary income. Note that this lump sum will roll into the overall assets of the trust which will earn future income that could be assessed if the trust were challenged down the road (as is the case with the existing trust assets that are not wrapped).

We need to withdraw money from Maverick to fund other activities. However, we could avoid actually withdrawing value from the annuity by swapping in

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Ranger investments to replace the cashed out Maverick. ie. the annuity redeems Maverick for cash, then the annuity uses the cash to buy Ranger investments from other trust entities. The trust ends up with cash out of the annuity but the value in the annuity is maintained - the only change to the annuity is that it now holds Maverick and Ranger rather than just Maverick.

FYI, Shari indicated that unless you want to cash in the annuity to more fully sever the relationship with Mike, she would recommend you keep the annuity in place. Keeley and I have mixed feelings on it. The annuity is a relatively small element of the total trust, and it has no value if the trust is never challenged. If the trust is challenged the value depends on the timing of the challenge and the value of the withdrawal now vs the value at it's ultimate surrender date and the return earned on it during that period. Last year Rodney was happy with us making the withdrawal and indicated the cost didn't warrant any potential benefit the annuity gave us. During our call yesterday, he was not as positive, but he did not tell us this was a bad idea, as is indicated in Mike's emails, Rodney was non-committal and felt like we understood the issues and once explained, this was a decision for the family to make.

Please call either Keeley or I to discuss. I can be reached on 345- [REDACTED] or 345- [REDACTED] over the weekend and through Monday. I need to go back to the trustees on this on no later than Tuesday morning.

The following copies of emails are:  
- Mike's email to the trustees  
- Mike's email to me  
- my response to Mike.

Thanks,  
Michelle  
ps. you looked great on Moneyline on Wednesday :)

```
>>> -----
>>> From: mike@tartanwealth.com[SMTP:mike@tartanwealth.com]
>>> Sent: 28 August 2001 17:54
>>> To: davidh@ifgint.com
>>> Subject: Annuity surrender
>>>
>>> David
>>>
>>> I am forwarding an e-mail I sent to Michelle about the requested
>>surrender
>>of a portion of the Bulldog annuity. My personal opinion is that this
>>is
>>not a wise move. The potential tax risks do not appear to have been
>>fully
>>explored with the principals involved. I know that R. Owens, the legal
>>advisor was not consulted and believes that this is not a good idea.
>>
>>> I think you should ensure that the appropriate principals are aware of
>>this
>>before the funds are withdrawn from the annuity. Once the genie is out
>>of
>>the bottle, we can't put it back in.
>>
>>> Mike French
>>> ----- Forwarded by Mike French/Tartan on 08/28/2001 11:48 AM -----
```

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DSI ED0006487

>>>  
>>>  
>>> Mike French  
>>>  
>>> To: mboucher@candw.ky  
>>>  
>>> 08/27/2001 cc:  
>>>  
>>> 01:11 PM Subject: Annuity  
>>>surrender  
>>>  
>>>  
>>>  
>>>  
>>>  
>>>  
>>> Michelle  
>>>  
>>> I understand from Chad that a portion of the "Bulldog" annuity is  
>>>proposed  
>>> to be surrendered. Before this is accomplished, I believe it would be  
>>> advisable for the Principals to understand the grave negative tax  
>>> implications that a surrender could have to them.  
>>>  
>>> The annuity exists because there is always a risk that the trust in  
>>> question will be classified by US tax authorities as a grantor trust,  
>>>thus  
>>> subjecting the settlor to taxation on all of the trust income. If this  
>>> were  
>>> the case, a claim would be made for all income of the trust for the  
>>>most  
>>> recent three, and probably six, years. This problem will never go away  
>>> until six years after the death of the settlor. While there are  
>>>statutes  
>>> of  
>>> limitation that would bar some claims with respect to the trust, there  
>>>is  
>>> NO statute of limitations that would bar a claim that the trust is a  
>>> grantor trust until six years after the death of the settlor.  
>>>  
>>> Based on the history of this annuity and the amount of gain deferred,  
>>>the  
>>> entire amount proposed to be withdrawn would be classified as ordinary  
>>> income for U.S. income tax purposes. If there is any action by the  
>>> authorities in the next six years to classify the trust as a grantor  
>>> trust,  
>>> then the settlor will be subjected to a claim for taxes equal to 40%  
>>>of  
>>> the  
>>> amount withdrawn plus interest and, possibly, penalties.  
>>>  
>>> If the primary desire here is to replace the existing investments with  
>>> other investments, that can be accomplished without surrendering the  
>>> annuity. I will be happy to discuss how that could be done. As you  
>>>know,  
>>> the fees on the annuity were substantially lowered last year, so I  
>>>presume  
>>> that cost is not the issue.

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>>>  
 >>> Before any portion of the annuity is surrendered and the funds are  
 >>> returned, I need written confirmation from you that the potential tax  
 >>> consequences outlined above have been fully explained to, and are  
 >>> fully  
 >>> understood by, the Principals. Once a surrender takes place, the tax  
 >>> problem thus created cannot be cured, and will be there for the next  
 >>> six  
 >>> years. I strongly recommend that the Principals consult with Rodney or  
 >>> some  
 >>> other knowledgeable advisor regarding this action, as my personal  
 >>> opinion  
 >>> is that it is a grave and unnecessary mistake.  
 >>>  
 >>> Mike

-----Original Message-----  
 From: Michelle Boucher <mboucher@candw.ky>  
 To: mike@tartanwealth.com <mike@tartanwealth.com>  
 Date: Thursday, August 30, 2001 8:41 PM  
 Subject: annuity surrender

>Mike,  
 >  
 >I apologise for my late response on this matter, but I have been traveling  
 >and am only just able to reply. I appreciate your concerns and desire to  
 >ensure that the principals are well informed about making this decision,  
 >especially in light of the fact that you originally recommended the  
 >transaction.  
 >  
 >I am aware of the issues you outlined, and as was customary during your  
 >term  
 >of service as a protector to these trusts, legal counsel was in fact  
 >consulted with regard to this matter and the actions taken which resulted  
 >in  
 >the submission of the the request to make this withdrawal are consistent  
 >with the advice obtained. Withdrawals from this policy have been under  
 >consideration by the Trustees, and consultations have taken place with  
 >legal  
 >counsel on this matter for over a year.  
 >  
 >With regards to your request that I furnish you with a letter as outlined  
 >in  
 >your email. I am not aware that the terms of the annuity contract provide  
 >that Scottish Annuity can refuse to release surrender proceeds under these  
 >circumstances.  
 >  
 >Although I presume you did so out of genuine concern for the  
 >affairs of the principals, I feel it was inappropriate for you to discuss  
 >the details of these confidential issues and transactions with Rodney Owens  
 >and the Trustees prior to communicating your intent to do so with us.  
 >Further, it appears that you have been misinformed as to the advice that  
 >was  
 >given and the discussions that have taken place regarding this transaction  
 >I suggest that to avoid any similar confusion in the future, you liaise  
 >with either myself or Keeley, we are both in direct and frequent  
 >communication with Rodney and the Trustees.  
 >  
 >As always, your assistance and comments on matters such as these are

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greatly  
>appreciated. I expect that if there are any changes regarding the  
surrender  
>of this policy, the trustees will be in contact with Chad at Scottish  
>Annuity in  
>the next few days.  
>  
>Michelle  
>  
>

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DOI-ED00064874

**Gcib Legal**

**From:** Schaulele, Louis J.  
**Sent:** Thursday, February 14, 2002 11:59 AM  
**To:** 'michelle boucher'  
**Subject:** accts.

I wanted to show you what I have sent to Charles and Sam:  
Memo to: Charles and Sam Wyly  
From: Lou Schaulele

I spoke with Keely yesterday and I would like to thank you for your support. One of the things that Keely brought up was the confidentiality issue between accounts and the bank. That is something that I am very aware of. There is a "Chinese wall" between the security side and bank side. In coming to a new organization we do not have the history that we had at Lehman (which is a good thing). Each entity is going to be a totally separate entity without any linkage. While we were at Lehman it evolved to the point that Lehman viewed some of the accounts (off and on) as linked. They went as far as getting the counsel for Michaels on the phone to see if they viewed the offshore accounts as affiliates. Even though the counsel did not view the offshore as affiliates, Lehman chose to treat them as affiliates. Should the offshore accounts come here they would come as independent new entities, which I would work to maintain. Again I just wanted to let you know that I am very aware of the situation and will work accordingly. Again thanks for your confidence.

BA 007662

Permanent Subcommittee on Investigations

**EXHIBIT #21a**

Statement Requested

---

**From:** Schaufele, Louis J. [louis.j.schaufele@bofasecurities.com]  
**Sent:** Tuesday, February 19, 2002 1:27 PM  
**To:** 'fwebb@tridenttrust.com'  
**Cc:** 'michelle.boucher'  
**Subject:** changes

I wanted to let you know that our entire team has left Lehman Brothers and joined Banc of America Securities. We did this for a variety of reasons some of which affected you. We are very excited about the opportunity that we have here. I think it will be very good for you and your relationships to start with a clean slate. We can talk more about this later. The security company is totally separate from the bank, and I am very aware of the confidentiality issue. Assuming that you want to move the relationship, my thoughts on the transition is: I will send Michele to Caymans to go over the paperwork. Simultaneously I will send documents to IOM. I will come over to pick up the documents. Please call at your earliest convenience.  
regards  
Lou



I had this discussion with Lou last week and he wrote a memo to Sam and Charles addressing this issue and that there is no sharing of information between the bank side and the broker side. He actually thinks this will be better at BoF A because they have never dealt with Michelle's accounts whereas Lehman was beginning to view all as one big entity (as evidenced by the problems we had on the MIKE swap we worked on earlier in the year). I guess only time will tell if it is going to be a problem, but Lou is very aware of the potential for problem and has promised to keep separation.

The preceding e-mail message (including any attachments) contains information that may be confidential, or constitute non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete it from your system. Use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

"Michelle Boucher" <mboucher@candw.ky>  
02/19/02 07:26 PM

To: <khennington@htst.com>  
cc:  
Subject: Fw: Lehmans

I think SW/CJW have thought about this re: chinese walls, but here's Shari's comments.  
Michelle

----- Original Message -----  
From: <shari\_robertson@maverickcap.com>  
To: "Michelle Boucher" <mboucher@candw.ky>  
Sent: Tuesday, February 19, 2002 6:34 PM  
Subject: Re: Lehmans

```
> I'll need to ask Lee on Blake/Lynchburg. The only concern I have,  
> which the Wyly's should consider also, is that my banker (where I  
> borrow money) is now affiliated with my broker (where the bulk of my  
> assets are). Okay to move Vasper.  
>  
>  
.....  
.....  
> The information contained in this e-mail message is intended only for
```

### Permanent Subcommittee on Investigations

EXHIBIT #21c

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PSI ED0000927

> the personal and confidential use of the recipient(s) named above.  
 > This message may be an attorney-client communication and as such is  
 > privileged and confidential. If the reader of this message is not the  
 > intended recipient or an agent responsible for delivering it to the  
 > intended recipient, you are hereby notified that you have received  
 > this document in error and that any review, dissemination,  
 > distribution, or copying of this message is strictly prohibited. If  
 > you have received this communication  
 in  
 > error, please notify us immediately by e-mail, and delete the original  
 > message.  
 >  
 \*\*\*\*\*  
 >  
 >  
 >  
 >  
 > "Michelle  
 > Boucher"  
 <shari\_robertson@maverickcap.com> To:  
 > <mboucher@cand  
 > w.ky> cc:  
 > Subject: Lehmans  
 >  
 > 02/19/02 01:08  
 > PM  
 >  
 >  
 >  
 >  
 >  
 >  
 >  
 >  
 >  
 > Lou's move to BofA was final last week. Sam & Charles have consented to  
 > moving all their stuff with him. I'll copy you on Keeley's email  
 > confirmation to me. CJW had some confidentiality issues and Lou  
 > addressed them for him.  
 >  
 > Please confirm we should move Blake/Lynchburg as well as Chisholm/Vasper.  
 >  
 > Lou is planning on travelling to IOM to ensure everything is properly  
 > executed and pay everyone over there a visit.  
 >  
 > Michelle  
 >  
 >  
 >  
 >

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 SEC\_ED00009279

PSI\_ED00009279

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**From:** Schaufele, Louis J.  
**Sent:** Friday, March 08, 2002 6:47 PM  
**To:** Kellen, Cindy L.  
**Cc:** 'tom.sailors@bofasecuritiesmcom'; Crittenden, Michele M.  
**Subject:** RE: IOM

Cindy

I totally understand your concern. I am very aware of the know your customer rule and I know these customers very well and have had a long history with them. I don't know how familiar you are with offshore corp. Usually they are set up for a reason that being asset protection or tax deferral. We will get you an explanation of the year end transaction, in general they were money that was invested in hedge funds. As I said I have dealt with many of these entities for a number of years, they have always been very responsive and we have had no problems. Hopefully this can be resolved quickly. Thanks for your attention. I am email accessible.

-----

Sent from my BlackBerry Wireless Handheld ([www.BlackBerry.net](http://www.BlackBerry.net))

Permanent Subcommittee on Investigations

**EXHIBIT #21d**

Confidential Treatment Requested

URGENT REQUEST FOR INFORMATION FOR 100017103 Devotion LTD---Bank of America

Hursh, Margo J.

Redacted by the Permanent  
Subcommittee on Investigations

From: Pinard, Zachary [Zachary.Pinard@FMR.COM]

Sent: Thursday, January 15, 2004 9:42 AM

To: Cavaliere, Christopher; Mariano, David; Capalad, Karen; Strouse, Marijke; Feduccia, Karen B; Huddins, Steven; Hursh, Margo; Aiso, Ken; Singleton, Mario; Hicks, Leigh; Pinard, Zachary

Subject: URGENT REQUEST FOR INFORMATION FOR: [REDACTED] Devotion LTD---Bank of America Correspondent

We are currently reviewing account [REDACTED] Devotion LTD---Bank of America Correspondent. This account is holding mostly a cash position. The citizenship on the account is indicating the Isle of Man. Consistent wiring activity has become apparent both into and out of the account, the majority of which are involving third parties. Outgoing wires have involved La Fourche Trust (Isle of Man), Red River Ventures I LP, and Bank of America Securities LLC. Incoming wires have been sent from Queensgate bank and Trust Co Ltd and the client. The incoming wires have all been domestic wires. No real investments are made in this account, although it does hold some stock.

Can you please supply us with the following information relevant to this account?

- o What is the purpose of this account?
- o Why is this account acting like a monetary conduit?
- o What is the relationship between this account, and all of the third party groups listed above?
- o Who is the beneficial owner of this account?
- o A copy of the account application and corporate documentation for these accounts.
- o Explanation of relationship with customer (i.e. are they personally known by the correspondent?)

Any other relevant information concerning this customer that you think would be helpful in evaluating this account

Please note that this information is confidential and should not be disseminated nor shared with the customer.

Please provide us this information within the next 10 days and send to Zachary.Pinard@fmr.com

Zachary Pinard  
Risk Analyst---Fidelity Investments  
tel. 617- [REDACTED]  
fax 617- [REDACTED]  
Boston, [REDACTED]

Redacted by the Permanent  
Subcommittee on Investigations

FA #2XT  
Schawale/Harris  
Louis Schawale  
Virgil Harris  
PB600

1/15/2004

Permanent Subcommittee on Investigations  
EXHIBIT #21e

Confidential Treatment Requested

BA 008159

URGENT REQUEST FOR INFORMATION FOR: P86017183 Devotion LTD—Bank of... Page 1 of 2

**Hursh, Margo J.**

= Redacted by the Permanent  
Subcommittee on Investigations

**From:** Crittenden, Michele M.  
**Sent:** Wednesday, January 21, 2004 4:04 PM  
**To:** Hursh, Margo J.  
**Cc:** Bensing, Lori S.; Wollard, Denise L.; Harris, Virgil E.; Schaufele, Louis J.  
**Subject:** RE: URGENT REQUEST FOR INFORMATION FOR: [REDACTED] Devotion LTD—Bank of America Correspondent

Devotion Ltd. is an offshore corporation (Incorporated in the Isle of Man), which serves as an investment entity. The beneficial owner of the entity is an offshore grantor trust... the beneficiaries of which are U.S. individuals. The securities in the account are owned by the entity. The relationships to the third party groups referenced in the e-mail we believe are strictly for investment purposes (both incoming & outgoing wires). We believe the entity would have no problem in providing additional details, in a macro-sense (ex. Real estate purchase, etc.) for what the wire transfers are for.

Copies of all pertinent account documentation will be faxed to the fax # shown on your e-mail (704-[REDACTED]).

Should you need any additional information, please feel free to let us know.

Thanks,

Michele Crittenden  
 Sales & Service Assistant  
 Bank of America Private Bank  
 Banc of America Investment Services, Inc.  
 Tel: 214-303-2917  
 Fax: 214-303-2980  
 TX1-488-31-01

—Original Message—

**From:** Wollard, Denise L.  
**Sent:** Friday, January 16, 2004 9:07 AM  
**To:** Crittenden, Michele M.; Harris, Virgil E.; Schaufele, Louis J.; Ezzo, Shawn  
**Cc:** Wollard, Denise L.; Bensing, Lori S.  
**Subject:** FW: URGENT REQUEST FOR INFORMATION FOR: [REDACTED] Devotion LTD—Bank of America Correspondent

Please see the Request for information below...they are asking that we respond by 1/22.  
 Please answer the questions and send back to me to review and I will forward them to Margo.

Thank you  
 Denise

—Original Message—

**From:** Hursh, Margo J.  
**Sent:** Thursday, January 15, 2004 3:30 PM  
**To:** Hutt, Douglas; Wollard, Denise L.  
**Cc:** Chandler, Scott; Hudgins, Steven E.; LaBelle, Jacque A.  
**Subject:** URGENT REQUEST FOR INFORMATION FOR: P86-017183 Devotion LTD—Bank of America Correspondent

Surveillance AML Inquiry

Permanent Subcommittee on Investigations  
**EXHIBIT #21f**

1/22/2004

BA 007845

URGENT REQUEST FOR INFORMATION FOR: P86017183 Devotion LTD—Bank of... Page 2 of 2

Account Number: [REDACTED]  
 Client Name: Devotion, LTD.  
 PCM Name(s): [REDACTED] Louis Schaufele/Virgil Harris

[REDACTED] = Redacted by the Permanent  
 Subcommittee on Investigations

Re: Money Movement Activity & KYC

Good Afternoon Everyone-

I am your new AML Compliance Officer and I work closely with your Surveillance Officer, Steve Hudgins.

An e-mail was forwarded to me from our clearing firm, NFS for additional information regarding the activity in the above-referenced account.

We are currently reviewing account P86017183 Devotion LTD—Bank of America Correspondent. This account is holding mostly a cash position. The citizenship on the account is indicating the Isle of Man. Consistent wiring activity has become apparent both into and out of the account, the majority of which are involving third parties. Outgoing wires have involved La Fourche Trust (Isle of Man), Red River Ventures LP, and Bank of America Securities LLC. Incoming wires have been sent from Queensgate bank and Trust Co Ltd and the client. The incoming wires have all been domestic wires. No real investments are made in this account, although it does hold some stock.

Can you please supply us with the following information relevant to this account?

- o What is the purpose of this account?
- o Why is this account acting like a monetary conduit?
- o What is the relationship between this account, and all of the third party groups listed above?
- o Who is the beneficial owner of this account?
- o A copy of the account application and corporate documentation for these accounts.
- o Explanation of relationship with customer (i.e. are they personally known by the correspondent?)
- o Any other relevant information concerning this customer that you think would be helpful in evaluating this account
- o I have reviewed the account opening documents provided on imaging, but I do not see a complete account application or the Articles of Incorporation. Please provide me with a copy from your files.

Please provide your response and account documents by Thursday, January 22, 2004.

Thank you,  
 Margo J. Hursh  
 Senior Compliance Officer  
 Banc of America Investment Services, Inc.  
 NC1-002-21-50  
 (704) 386-9732 phone  
 (704) 388-8022 fax

1/22/2004

BA 007850

From: Hursh, Margo J.  
 Sent: Tuesday, February 24, 2004 3:10 PM  
 To: Wollard, Denise L.  
 Subject: RE: Account Inquiry - Various

Okay, thanks.

-----Original Message-----  
 From: Wollard, Denise L.  
 Sent: Tuesday, February 24, 2004 3:08 PM  
 To: Hursh, Margo J.  
 Cc: Huddins, Steven E., Beneing, Lori S.  
 Subject: RE: Account Inquiry - Various

Margo...I have discussed this with Lori. We are going to have another meeting with the rep on this account to get these questions answered. Lori is out this afternoon. I will see if we can get together tomorrow am with the rep to respond to the rest of these questions. I realize the urgency of this....and will do my best to get this done as soon as possible.

tkc  
 denise

-----Original Message-----  
 From: Hursh, Margo J.  
 Sent: Tuesday, February 24, 2004 2:03 PM  
 To: Wollard, Denise L.  
 Cc: Huddins, Steven E.  
 Subject: FW: Account Inquiry - Various

Denise-

NFS is requesting a status on this open issue. Please provide me with an update.

Thanks,  
 Margo J. Hursh  
 Senior Compliance Officer  
 Banc of America Investment Services, Inc.  
 NC1-002-21-50  
 (704) 386-9732 phone  
 (704) 388-6022 fax

-----Original Message-----  
 From: Wollard, Denise L.  
 Sent: Wednesday, February 18, 2004 3:17 PM  
 To: Hursh, Margo J.  
 Cc: Huddins, Steven E., Beneing, Lori S.  
 Subject: RE: Account Inquiry - Various

I will get them to you as soon as possible.

Thanks  
 denise

-----Original Message-----  
 From: Hursh, Margo J.  
 Sent: Wednesday, February 18, 2004 1:48 PM  
 To: Wollard, Denise L.

1

Permanent Subcommittee on Investigations

EXHIBIT #21g

BA 03261

Cc: Hudgins, Steven E.  
Subject: FW: Account Inquiry - Various

Denise,

I forwarded the response you sent to Steve Hudgins onto NPS. They had been asking me about the large positions in Michael's. Please read the additional questions from Zach Pinard and respond back to me.

Thank you,  
Margo J. Hursh  
Senior Compliance Officer  
Bank of America Investment Services, Inc.  
NCJ-002-21-50  
(704) 386-9732 phone  
(704) 388-8022 fax

-----Original Message-----  
From: Pinard, Zachary [mailto:Zachary.Pinard@FMR.COM]  
Sent: Wednesday, February 18, 2004 2:27 PM  
To: Hursh, Margo  
Cc: Grady, Alex  
Subject: RE: Account Inquiry - Various

Margo,

I do have more questions. If all of the accounts were funded by the same "grantor", then they are all related in that aspect. I guess I would want to know the following:

- 1) Where did the original stock options come from?
- 2) Who/What acted as the "grantor" of the stock options? If an entity deposited the shares, who was the owner of the entity?
- 3) Who are the beneficial owners of all of the grantor trusts?
- 4) Copies of the account applications, W8-BMY information for the grantor trusts, and if information is being held on the grantor trusts themselves, I want to see that information to determine which US individuals are the owners of these accounts.

My concern is that I do not believe that this company is reporting the ownership of the shares adequately. The fact that they are all being treated as separate companies does not impact the matter because they clearly have a link due to the original deposit. In addition, some of the accounts also maintain a control relationship even as independent accounts. Therefore, an account like P86017043 (Quayle Ltd), which made a sale of 100,000 shares of Michael's on 09/02/03 should have filed a form 144 with the SEC because of their control relationship before the sale. Do we have a copy of that form on file? This is an important issue that I do not believe can be explained in a paragraph and without documentation. I know that this issue will take a lot of time to resolve, but I do not believe that we understand their business, and I want to make sure they are in compliance with SEC regulations. Thank you for the preliminary information.

Zachary Pinard  
Risk Analyst---Fidelity Investments  
tel. 617-563-2638  
fax 617-385-2960  
Boston, MA

-----Original Message-----  
From: Hursh, Margo [mailto:margo.hursh@bankofamerica.com]  
Sent: Wednesday, February 18, 2004 1:56 PM  
To: zachary.pinard@fmr.com  
Subject: FW: Account Inquiry - Various

Zach,



Here is the response regarding Michaels' stock. Let me know what additional information you may need.

Thanks,  
Margo

> -----Original Message-----  
> From: Hudgins, Steven E.  
> Sent: Wednesday, February 18, 2004 12:59 PM  
> To: Hursh, Margo J.  
> Subject: FW: Account Inquiry - Various  
>  
> FYI  
>  
> -----Original Message-----  
> From: Wollard, Denise L.  
> Sent: Wednesday, February 18, 2004 12:42 PM  
> To: Hudgins, Steven E.  
> Cc: McAdams, Sue D.; Bensing, Lori S.; Wollard, Denise L.  
> Subject: RE: Account Inquiry - Various  
>  
> As per our conversation this am, I did get the additional information  
> that you requested.  
>  
> Each account is a separate corporation.  
> There is no relationship between the corporations other than the  
> original grant of options of Michael's Stores from the grantor to set  
> up the corporations. These are offshore corporations which serve as  
> investment entities. The beneficial owners of the entities are  
> offshore grantor trusts...the beneficiaries are U.S. individuals. The  
> securities in the account are owned by the entity, not insiders.  
> The reason for using margin is the interest rate is cheap, and also, the  
> growth is not taxed until it comes back into the US  
>  
> The suitability has been updated on all of the accounts.  
>  
> If you need further information, please let me know.  
>  
> Thanks  
> Denise  
>  
> -----Original Message-----  
> From: Hudgins, Steven E.  
> Sent: Friday, February 06, 2004 10:29 AM  
> To: Hutt, Douglas; Wollard, Denise L.  
> Cc: McAdams, Sue D.  
> Subject: Account Inquiry - Various  
>  
> Surveillance Compliance Inquiry  
>  
> The accounts referenced below, appeared on the Large Margin Debit  
> Report:  
>  
> P86- [Redacted by the Permanent  
> P86- Subcommittee on Investigations]  
> P86-  
> P86-  
> P86-  
>  
> The accounts each hold a large position of Michaels Stores. What is  
> the relationship between the accounts? Also, what is the reason for  
> the concentrated position in Michaels Stores?  
>  
> Please update the suitability information on PBSI for the accounts  
> referenced above.

> Please respond within five business days.  
 >  
 > Thanks,  
 >  
 > Steve Hudgins  
 > Surveillance Compliance Officer  
 > Banc of America Investments Services, Inc.  
 > Charlotte  
 > (704) 387-1468 Phone  
 > (704) 388-8022 Fax  
 >

\*\*\*\*\*  
 For your security, Banc of America Investment Services, Inc. does not accept instructions concerning changes to accounts or transactions through email. Additionally, do not send information you consider confidential via email as it will not be transmitted through a secure line. Instead, please speak to your Banc of America Investment Services, Inc. investment representative.

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Are Not FDIC Insured *** May Lose Value *** Are Not Bank Guaranteed
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Past performance is no guarantee of future results.

Banc of America Securities, LLC is an affiliate of Banc of America Investment Services, Inc. and a non-bank subsidiary of Bank of America Corporation.

From: Harris, Barry [barry.harris@bankofamerica.com]  
 Sent: Friday, March 26, 2004 10:56 AM  
 To: Schaufele, Louis J.; Bensing, Lori S.; Hearn, Mike  
 Cc: Hechtlinger, Susan; Bowden, Theodore I.  
 Subject: Re: need some offshore help

-----  
 Sent from my BlackBerry Wireless Handheld

-----Original Message-----  
 From: Harris, Barry P. <Barry.Harris@BankofAmerica.com>  
 To: Schaufele, Louis J. <louis.j.schaufele@bankofamerica.com>; Bensing, Lori S. <lori.s.bensing@bankofamerica.com>; Hearn, Mike <Mike.Hearn@BankofAmerica.com>  
 Sent: Fri Mar 26 10:54:57 2004  
 Subject: Re: need some offshore help

Unfortunately no. Need names and/or other identifiers to run them through the background checks as I understand our and NFS' processes. But Susan H and Ted may have other thoughts.

Barry

-----  
 Sent from my BlackBerry Wireless Handheld

-----Original Message-----  
 From: Schaufele, Louis J. <louis.j.schaufele@bankofamerica.com>  
 To: Harris, Barry P. <Barry.Harris@BankofAmerica.com>; Bensing, Lori S. <lori.s.bensing@bankofamerica.com>; Hearn, Mike <Mike.Hearn@BankofAmerica.com>  
 Sent: Fri Mar 26 10:28:33 2004  
 Subject: RE: need some offshore help

Is it sufficient to say that the beneficiaries of the trust are members of the Charles Wyly family and their immediate children and grandchildren subject to the discretion of the trustee?

-----Original Message-----  
 From: Harris, Barry P.  
 Sent: Thursday, March 25, 2004 6:21 PM  
 To: Bensing, Lori S.; Hearn, Mike  
 Cc: Schaufele, Louis J.; Hudgins, Steven E.; Wollard, Denise L.; Bowden, Theodore I.; Schroder, Alan; Hechtlinger, Susan; Rusnak, Geoff  
 Subject: Re: need some offshore help  
 Importance: High

Lori, I think you have I'd'ed 2 distinct issues. On the first, I would assume that a letter from the corp GC wou satisfy NFS that the stock is neither control nor restricted.

The second, AML/Patriot Act, more problematic. I presume the trustee is not BofA. If not, I believe that our policies require that we know the I'd of all beneficiaries as is required by law. If the trustees or beneficiaries are unwilling to disclose, I believe that leaves us and NFS with little option. The regulators leave us virtually no room, and a failure to follow our own policies (if I am correct on them) would be a significant breach in

Permanent Subcommittee on Investigations

EXHIBIT #21h

this sensitive area.

Mike/Susan/Geoff, your thoughts and expertise?

Barry

-----  
Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Bensing, Lori S. <lori.s.bensing@bankofamerica.com>  
To: Harris, Barry P. <Barry.Harris@BankofAmerica.com>; Hearn, Mike  
<Mike.Hearn@BankofAmerica.com>  
CC: Schaufele, Louis J. <louis.j.schaufele@bankofamerica.com>; Hudgins,  
Steven E, <Steven.Hudgins@BankofAmerica.com>; Wollard, Denise L.  
<denise.l.wollard@bankofamerica.com>  
Sent: Thu Mar 25 17:43:15 2004  
Subject: need some offshore help

Jim Dwiggins suggested floating this out to both of you.  
At conversion, Barry you may remember that we got approval to hold several  
Isle of Man accounts. We have been experiencing a lot of difficulty with  
NFS on these accounts since conversion and in particular 10 accounts that  
hold MIK stock (Michael's Stores). These accounts were created a number of  
years ago by trusts and according to the directorate the accounts share  
several of the same beneficiaries (various Wyly Family members and various  
charities). In short, NFS thinks that there might be Patriot Act issues and  
that the stock might be affiliated in some way. MUCH of their  
misunderstanding stems from a general lack of knowledge of the purpose and  
benefits of offshore accounts. The stock transferred in as clean stock but  
if need be we can go to corporate counsel for Michaels and get an opinion  
(1.7mm shares total) or statement that the shares are not affiliated. We  
can also go to the Isle of Man attorney for these accounts and get some  
letter that states that the beneficiaries are not terrorists. What we  
probably cannot do is get a list of the names, addresses and social security  
numbers of the beneficiaries. I am afraid that if we can't provide this that  
they may tell us to move the accounts. We may need someone from legal to  
help us with this (I should mention that BAI compliance is satisfied). Your  
thoughts?

Lori Bensing  
Managing Director, Sales Manager  
Bank of America Private Bank  
Banc of America Investment Services, Inc.  
214-220-3405 ph  
214-220-3418 fax

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**From:** Michelle Boucher [mboucher@itc.com.ky]  
**Sent:** Tuesday, April 27, 2004 5:46 PM  
**To:** Crittenden, Michele M; Louis Schaufele (E-mail)  
**Subject:** bofa

Lou,  
 Last week you mentioned that an acceptable financial institution for purposes of providing certification that BofA/NFS requires would be a US regulated insurance company. Please confirm back to me that Scottish Re Group Limited would be an acceptable entity.  
 Michelle

Permanent Subcommittee on Investigations <b>EXHIBIT #21i</b>
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Confidential Treatment Requested

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**From:** Schaufele, Louis J. [louis.j.schaufele@bankofamerica.com]  
**Sent:** Thursday, April 29, 2004 9:50 AM  
**To:** Michelle Boucher (E-mail)  
**Subject:** regular

First let me say I am sorry for all of this run around on the offshores. I plan to talk today to Phil on the SCT request. Let me say this, if we were to enter into some type of forward sale with any of the entities that stock would be moved out of BAI (this is where you are now) and into BAS. I do not think we would have the beneficiary issues. I know this is nuts but BAS deals more with offshore than BAI (yes, we are the same company??? go figure). The obvious question would be then lets just move all of these accts. over, that is possible but I am not sure we could handle some of the needs that you might have on another basis. The reason that I mention this is that I do not want to hold you up on any business that you might want to conduct while we are working on the beneficiaries issue. The best world answer on the beneficiary issue would be that we are OK with SCT USA and don't have to change anything, next best would be is that you give us the beneficiaries and we give you something that makes you comfortable that it does not go to NFS (or anyone else unless by law). I really appreciate your patience. I have attached new MIK pricing as well.

The 85% floor forward the implied interest cost is the difference between the advance rate and the floor divided by the number of years so the implied rate would be approximately 3% versus on the 100% floor the implied interest cost is 6.6%. Obviously if someone is more bullish on the stock then the 85% floor is more attractive. Let me know what else I can do.  
thanks

Lou Schaufele  
Managing Director / Investments  
Private Client Advisor  
Bank of America Private Bank  
Banc of America Investment Services, Inc.  
214 303 2916  
214-303-2980 fax

Permanent Subcommittee on Investigations

EXHIBIT #21j

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**From:** Bensing, Lori S. [lori.s.bensing@bankofamerica.com]  
**Sent:** Thursday, April 29, 2004 6:06 PM  
**To:** Wertz, Phillip  
**Subject:** RE: Michaels Account

is this the part where I respond "you're my hero"

-----Original Message-----

**From:** Wertz, Phillip [mailto:Phillip.Wertz@bankofamerica.com]  
**Sent:** Thursday, April 29, 2004 4:56 PM  
**To:** Bensing, Lori S; Schaufele, Louis J; Hearn, Mike; Liendo, Carolina; Crittenden, Michele M  
**Subject:** Michaels Account

Most of you know this by now, but just to keep everyone informed. Here is where we are with the Michaels accounts. I understand that Michele Boucher has agreed to give Bank of America the beneficial ownership information, and has requested that we sign a confidentiality agreement. I have sent a brief draft to the sales folks and hopefully that can be worked out by tomorrow afternoon. I spoke with Jai Chanda and Carl Brown at NFS and they understand that we will not be sharing the beneficial ownership information with them. They said that the accounts will not be closed and no restrictions would be placed on the accounts. We are not giving them at this time a formal reliance agreement of any sort. Given that they will not have all the information we have in their files, if they flag transactions or issues that raise questions or concerns, Bank of America staff may from time to time have to have discussions to try to make them comfortable that transactions are appropriate and not suspicious. If NFS cannot get comfortable on any given issue, they may do what they feel they need to do to comply with their regulatory requirements and procedures. I was assured that such actions would not include putting restrictions on accounts or closing accounts without dialogue with Bank of America and an opportunity to work through the issue.

Long story short, we should still get the beneficial ownership information as soon as possible, but we are not facing an ultimatum from NFS about account closure anymore.

Permanent Subcommittee on Investigations  
**EXHIBIT #21k**

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**From:** Schaufele, Louis J. [louis.j.schaufele@bankofamerica.com]  
**Sent:** Thursday, April 29, 2004 1:45 PM  
**To:** 'Michelle Boucher'  
**Subject:** RE: same old subject

I think so I will work on it.

-----Original Message-----  
**From:** Michelle Boucher [mailto:mboucher@itc.com.ky]  
**Sent:** Thursday, April 29, 2004 12:45 PM  
**To:** Schaufele, Louis J  
**Subject:** RE: same old subject

do we need to set up a call with Phil, myself and charles pulman?

Permanent Subcommittee on Investigations  
**EXHIBIT #211**

Confidential Treatment Requested

BA 0799



**From:** Schaufele, Louis J. [louis.j.schaufele@bankofamerica.com]  
**Sent:** Thursday, May 06, 2004 8:23 AM  
**To:** Michelle Boucher (E-mail)  
**Subject:** FW: AML Issues

I just sent this to David. Here are some thoughts, I am checking with prime brokerage to see if we can open accounts on that platform making certain that they are independent accounts, should we go that way. On the collar issue with Elegance, I am told that the platform for the derivatives does not need as much "documentation". Let me pose this question: What if we got a list of the beneficiaries that was somewhat vague: for example The following entities Flo Flo and Elegance have as beneficial owners family members of Louis J. Schaufele. The following entities have as beneficial owners of Michele Crittenden and Red Cross and the American Cancer Society. The only difference here is not specifying the exact owners to the exact accounts. I don't know if I can get them to agree but if the worry is AML this would allow them to run the screen etc...

I really appreciate your diligence in trying to make this work. I don't think I would actually move these yet. However, I would make certain that you have a back up if needed. I will continue to work on this. Do you think I could get something from Meadows saying we do not feel we need to supply due to whatever. This gives me something to go to more senior mgmt. thanks

> -----Original Message-----  
 > From: Schaufele, Louis J.  
 > Sent: Thursday, May 06, 2004 7:07 AM  
 > To: David Harris (E-mail)  
 > Cc: IFG International House (E-mail)  
 > Subject: AML Issues  
 >  
 > David we need the following (we have been in discussion with Michele Boucher):  
 > In accordance with our previous discussions, Banc of America Investment Services, Inc. is requesting that you provide to us supplemental information with respect to the attached list of accounts. In particular, we request that you deliver to us the names and city, state and country of residence of all entities or individuals who directly or indirectly are beneficial owners of the accounts. We are requesting this information in order to fulfill our obligations under Bank of America's know-your-customer policies and procedures. These policies and procedures are part of Bank of America's anti-money laundering and anti-terrorism financing program that has been implemented in order to comply with applicable United States law, including the Bank Secrecy Act (as amended by the USA PATRIOT Act).  
 >  
 > I am sorry for the inconvenience but this appears out of my control.  
 >  
 >  
 > Lou Schaufele  
 > Managing Director / Investments  
 > Private Client Advisor  
 > Bank of America Private Bank  
 > Banc of America Investment Services, Inc.  
 > 214 303 2916  
 > 214-303-2980 fax  
 >  
 >  
 .

Permanent Subcommittee on Investigations  
 EXHIBIT #21m

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**From:** Schaufele, Louis J. [louis.j.schaufele@bankofamerica.com]  
**Sent:** Thursday, May 06, 2004 1:02 PM  
**To:** Michelle Boucher (E-mail)  
**Cc:** Crittenden, Michele M.

Here is a thought I have, provide whatever you are comfortable with and that way I have something in hand to go to the powers that be. I did talk to David about giving a letter that stated names of beneficiaries but did not tie the beneficiaries to a specific acct. With something in hand I feel I will improve my negotiation position greatly.

thanks

Lou Schaufele  
 Managing Director / Investments  
 Private Client Advisor  
 Bank of America Private Bank  
 Banc of America Investment Services, Inc.  
 214 303 2916  
 214-303-2980 fax

---

**From:** Schaufele, Louis J. [louis.j.schaufele@bankofamerica.com]  
**Sent:** Thursday, May 06, 2004 3:34 PM  
**To:** Crittenden, Michele M.  
**Cc:** Bensing, Lori S.  
**Subject:** FW: help  
**Importance:** High

-----Original Message-----

**From:** Schaufele, Louis J.  
**Sent:** Thursday, May 06, 2004 2:14 PM  
**To:** Michelle Boucher (E-mail)  
**Subject:** help  
**Importance:** High

I hung up from the Phil Wertz and he is trying to work with us. Can you get me a couple of things: We are going to go to our int'l attorney and ask about a IOM law that might prohibit them from releasing the names. You used a term for some law you had in Cayman's but anything you can get me will be great (if possible today on this). Also can you get Meadows Owens to give me a brief legal note as to why they feel you cannot give the names up voluntarily. I think if he saw this argument this would help immensely.

Also if you have opened accounts elsewhere recently and they have not required owners if appropriate what firms did this as maybe we could ask their legal as to why or how they see it that it is not needed (you may feel not appropriate and I understand).  
thanks

Lou Schaufele  
Managing Director / Investments  
Private Client Advisor  
Bank of America Private Bank  
Bank of America Investment Services, Inc.  
214 303 2916  
214-303-2980 fax

Permanent Subcommittee on Investigations  
**EXHIBIT #21o**

Confidential Treatment Requested

BA 08013

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**From:** Robey, Daniel [Daniel.Robey@bankofamerica.com]  
**Sent:** Tuesday, May 25, 2004 3:37 AM  
**To:** Schaufele, Louis J  
**Cc:** Rogers, Michael B. (BAS); Crittenden, Michele M; Bensing, Lori S; O'Donnell, Robin  
**Subject:** RE: Isle of Man (IOM)

Lou

The level of due diligence required on the Isle of Man corporation is based upon an interpretation of the US Patriot Act. I would not like to second guess Phil Wertz's interpretation of a piece of US legislation.

In order to assist you and to determine the level of reliance that may be placed on representations made by an Isle of Man Corporation I suggest that you ask Phil Wertz to contact the UK anti-money laundering advisor, Daniel Shonfeld.

Regards, Dan.

Daniel Robey  
Assistant General Counsel  
Bank of America

Tel - 0207 174 4740  
Fax - 0207 174 6460  
e-mail - daniel.robey@bankofamerica.com

-----Original Message-----

**From:** Schaufele, Louis J  
**Sent:** 21 May 2004 16:06  
**To:** Robey, Daniel  
**Cc:** Rogers, Michael B. (BAS); Crittenden, Michele M; Bensing, Lori S  
**Subject:** Isle of Man (IOM)  
**Importance:** High

I have an issue that I am trying to work thru with BAI legal. We currently have accounts with several IOM Offshore Corporations (OC) managed by various investment companies in IOM. I have dealt with the accounts for several years. These entities were set up in the early 90's by a foreign grantor trust, the beneficiaries of the trust are US individuals (members of a wealthy Dallas family). I am being told that because of the Patriot Act we need to know whom the actual beneficiaries are. The OCs have been able to open accounts with our competitors without providing that information and they have received advice from on and offshore legal counsel that they do not need to provide. We obviously have various corporate documents and copies of passports etc... for each of the offshores. I am being told because of the Patriot Act we must have that information and the client is saying that we do not need to go that deeply. We actually got a letter of reassurance from one of the trust companies that states that "we confirm that we have carried out the usual accepted Anti-Money Laundering checks on the underlying beneficiaries of Tensas Limited ("the Company")...We confirm the checks were satisfactory....", which is from IOM but it is something for our file. In talking with the people here in our prime office in Dallas I understand they might not need that much of information. We are at an impasse and I do not want to see 75mm of assets move to a competitor. I am sure you all are more familiar with offshores. I am dealing with Phil Wertz in BAI legal. I thought maybe you could give me some comments of how you view these. There are actually 2 of the entities that have Prime brokerage relationship currently with BAS Prime and I am not having any problem with those. Any comments I would greatly appreciate.

Lou Schaufele  
Managing Director / Investments  
Private Client Advisor  
Bank of America Private Bank  
Bank of America Investment Services, Inc.  
214 363 2916  
214-363-2989 fax

Permanent Subcommittee on Investigations  
EXHIBIT #21p

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From: Schaufele, Louis J. [louis.j.schaufele@bankofamerica.com]  
 Sent: Wednesday, May 26, 2004 7:24 PM  
 To: 'cpulman@meadowsowens.com'  
 Subject: Fw: IOM

Charles thanks for the call, I have attached an email from Phil Wertz and would appreciate any comments you might have. I think bottom line is the IF scenario we spoke of. You can see Phil seems pretty adamant on it.

Thanks  
 Michele is my asst. And fwd phil's email.

-----  
 Sent from my BlackBerry Wireless Handheld

-----Original Message-----  
 From: Crittenden, Michele M. <michele.m.crittenden@bankofamerica.com>  
 To: Schaufele, Louis J. <louis.j.schaufele@bankofamerica.com>  
 Sent: Wed May 26 17:27:55 2004  
 Subject: IOM

cpulman@meadowsowens.com

Set forth below is the relevant text of Section 312 of Patriot Act. As the proposed regulations are not yet final, the interim rules state that we must apply with the statutory language itself. Section 3(A) is pretty clear about the need to identify beneficial owners. The proposed rules (which will eventually be finalized) would clarify some of the scope of the rules. For example, it provided that you need to identify the holders of beneficial ownership interests if they have a right to at least \$1MM or 5% of the value of the account (therefore setting a de minimus threshold).

All of these rules are subject to interpretation and therefore it is difficult to say it is black and white, however, I don't think this is as gray as their counsel argues it is. They argued that it is not technically a "private banking account". They argued that it is not necessarily a non-US customer if you drill down to the beneficial owners. They argued that the family may not technically have "beneficial ownership interests" depending on how that term is defined. As pointed out to their counsel, the issue we face is that the Banking Regulators and Congress are interpreting the Patriot Act rules with a mindset that expects banks to not split hairs on technicalities and to go beyond the letter of the rules. When the final rules are published, I think they will be relatively consistent with the proposed rules. This was also the basis of our Corporate Policy. I would not feel comfortable advising the bank that our policy should eliminate the need for this information in all cases, so I believe you must argue that you have done enough to warrant an exception to the general rule.

If the decision is made to keep the account open, we will take the position that we have sufficient information in the file and know enough overall to satisfy this legal obligation. Without the names themselves, I think there is a risk that we will be deemed to have not met that obligation under Section 312. Without the names themselves, there is also a risk that we are criticized because we are unable to screen these people against OFAC and other terrorist lists that are issued from time to time. None of those are guarantees of a legal violation or a regulatory sanction and therefore must be weighed by the business unit.

I must admit that I have not heard any persuasive arguments from the client

Permanent Subcommittee on Investigations  
 EXHIBIT #21q

about why they should withhold the names, other than that they just want to maintain secrecy. I agree with the IOM counsel that the director couldn't give the names without consent of their clients, but I have confirmed that we get such consent all the time for offshore trusts that we manage when faced with such circumstances. Given how much we know overall and your relationship with them, I don't understand why they would object if the director asked for their consent.

## Section 312

''(1) IN GENERAL.-Each financial institution that establishes, maintains, administers, or manages a private banking account or a correspondent account in the United States for a non-United States person, including a foreign individual visiting the United States, or a representative of a non-United States person shall establish appropriate, specific, and, where necessary, enhanced, due diligence policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through those accounts.

''(3) MINIMUM STANDARDS FOR PRIVATE BANKING ACCOUNTS.-If a private banking account is requested or maintained by, or on behalf of, a non-United States person, then the due diligence policies, procedures, and controls required under paragraph (1) shall, at a minimum, ensure that the financial institution takes reasonable steps-

''(A) to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, such account as needed to guard against money laundering and report any suspicious transactions under subsection (g); and

''(B) to conduct enhanced scrutiny of any such account that is requested or maintained by, or on behalf of, a senior foreign political figure, or any immediate family member or close associate of a senior foreign political figure that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

''(4) DEFINITION.-For purposes of this subsection, the following definitions shall apply:

''(B) PRIVATE BANKING ACCOUNT.-The term 'private banking account' means an account (or any combination of accounts) that-

''(i) requires a minimum aggregate deposits of funds or other assets of not less 24 than \$1,000,000;

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''(ii) is established on behalf of 1 or more individuals who have a direct or beneficial ownership interest in the account; and

''(iii) is assigned to, or is administered or managed by, in whole or in part, an officer, employee, or agent of a financial institution acting as a liaison between the financial institution and the direct or beneficial owner of the account.''

-----Original Message-----  
From: Schaufele, Louis J

Sent: Tuesday, May 25, 2004 9:46 AM  
To: Wertz, Phillip  
Subject: RE: IOM

We are having a conference call with Tim Maloney. In your opinion (setting corporate policy aside), would you classify this as a black and white issue or grey? I would assume you would say grey given that the final version of Patriot is not out yet? I have attached my history on the relationship that I sent to Maloney.  
thanks

-----Original Message-----  
From: Wertz, Phillip [mailto:Phillip.Wertz@bankofamerica.com]  
Sent: Tuesday, May 25, 2004 8:39 AM  
To: Schaufele, Louis J  
Subject: RE: IOM

I have not spoken to him about the MIK issue, but our problem is really a US law issue and a Corporate Policy issue.

-----Original Message-----  
From: Schaufele, Louis J  
Sent: Tuesday, May 25, 2004 8:05 AM  
To: Wertz, Phillip  
Subject: IOM

Have you spoken with Daniel Shonfeld, as I understand it he is the UK AML advisor. I just wondered if the UK folks have any different interpretation.  
thanks

Lou Schaufele  
Managing Director / Investments  
Private Client Advisor  
Bank of America Private Bank  
Bank of America Investment Services, Inc.  
214 303 2916  
214-303-2980 fax



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**From:** Maloney, Timothy P. [timothy.p.maloney@bankofamerica.com]  
**Sent:** Monday, June 07, 2004 11:45 AM  
**To:** Harris, Barry P.; Norton, Michael J.; Santo, Michael; Bowden, Theodore I.; Newth, Ronald J.  
**Subject:** RE: Wileys--Attorney/client Privileged

absolutely right

-----Original Message-----

**From:** Harris, Barry P.  
**Sent:** Monday, June 07, 2004 10:41 AM  
**To:** Norton, Michael J.; Maloney, Timothy P.; Santo, Michael; Bowden, Theodore I.; Newth, Ronald J.  
**Subject:** RE: Wileys--Attorney/client Privileged

Mike, if you weren't able to do so, please make certain that NFS understands that they need to come to their conclusion on the account independently—that BAI is in no way exerting pressure on them to abandon or depart from what they consider to be necessary on these accounts. Many thanks,

Barry

-----Original Message-----

**From:** Norton, Michael J.  
**Sent:** Monday, June 07, 2004 11:37 AM  
**To:** Harris, Barry P.; Maloney, Timothy P.; Santo, Michael; Bowden, Theodore I.; Newth, Ronald J.  
**Subject:** RE: Wileys--Attorney/client Privileged

All,

I have confirmed with NF that they have escalated this account to their AML/Risk Control group. They have no plans to restrict the account, but as Barry has pointed out they will issue a SAR's if they see suspicious activity. I agree with Barry's comment that they might tend to be more caution with this account because they/we don't have information on the beneficiaries. I have communicated the new proposal and they will begin discussing it today within the Fidelity AML group.

Mike

-----Original Message-----

**From:** Harris, Barry P.  
**Sent:** Monday, June 07, 2004 10:47 AM  
**To:** Maloney, Timothy P.; Santo, Michael; Norton, Michael J.; Bowden, Theodore I.  
**Subject:** FW: Wileys--Attorney/client Privileged  
**Importance:** High

Gentlemen, Mike N. called me saying he'd deal with NFS on the proposal. However, he also has the understanding that NFS had "backed off" on the issues, indicating that they would not restrict the accounts for lack of info. Supposedly they said that if they saw any "suspicious activity", they would immediately file a SARs report ["Suspicious Activity Report"]. If they had the info., however, they still should file a SARs report if they see "suspicious activity". It might be that their definition of "suspicious" would be lower without the paperwork.

Permanent Subcommittee on Investigations <b>EXHIBIT #21r</b>
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Mike N. will confirm NFS' current stance on the issues. Consistent with my conversation with Mike S., if NFS has dropped the demand, Mike N. will make certain that they have done so based upon their independent decision, and are not somehow departing from what they believe to be reasonable and necessary practice because of BAI's involvement.

Mike N. also confirmed my fears that there are technological challenges to the proposal we've formulated. Specifically, that it will be very difficult for the outside firm to do the necessary checks without providing the info. to NFS directly or to some thirdparty with access to the Equifax systems used in the check.

Mike N. will let us know NFS' reaction.

Barry

-----Original Message-----

**From:** Harris, Barry P.  
**Sent:** Monday, June 07, 2004 10:12 AM  
**To:** Maloney, Timothy P.; Norton, Michael J.; Bowden, Theodore I.  
**Cc:** Santo, Michael  
**Subject:** RE: Wileys--Attorney/client Privileged  
**Importance:** High

Mike and Ted, I'm not sure who to contact on this one. Need to run a proposal up to NFS on the Wiley accounts. As you recall, these are the Isle of Mann trust accounts, where the settlors and beneficiaries are not comfortable in providing the names of the ultimate beneficiaries. I understand that their concern is that the trusts were established to protect assets from adverse claims, such as divorces, and they fear that providing the information will make it accessible if such disputes arise.

NFS has indicated, I understand, that it must have the info. under AML and the Patriot Act.

The proposal is as follows. To the extent that I mistate it, or that my understanding differs from Mike S.' or Tim's, I ask that they let us know immediately so that we can all have a common understanding. Under the proposal which Tim wishes to take to the Wileys, they would:

1. Participate in the joint retention by all Wiley trust beneficiaries [through their attorney(s), I presume, with BAI and NFS of an outside law firm of BAI's and NFS' selection. The outside firm would be provided by the Wiley's all information necessary for the firm to perform the AML and Patriot checks that BAI and NFS require. The information would be under a joint A/C privilege among all the parties.
2. The firm would perform the checks, and report back to all parties their findings. The firm would retain all info. for production to NFS and/or BAI under certain circumstances, discussed below.

3. The Wileys agree that, should BAI or NFS ever receive a regulatory request for the info., they and/or the outside firm will produce it to NFS and BAI.

4. The Wileys agree that when the Rules are promulgated [presumed later this year], if the Rules require that NFS or BAI gather the information, the Wileys will produce all updated info. necessary to fulfill the regulatory directive.

5. The Wileys will assume all costs associated with this process.

I just spoke with Mike S., and this does seem to comport with his thoughts. He specifically wants NFS to understand that it must be comfortable that this process will satisfy its needs and obligations, and that NFS is in no way deferring to BAI on the issues. In short, NFS must be satisfied and comfortable with this process before we will propose it to the Wileys.

I also need input from you, Mike N. or Ted, as to how the outside firm could carry out these tasks without further disclosure of the info. I understand that NFS' processes, at least in part, involve bouncing the beneficiaries names off a program database provided by a 3d party vendor. My question is how the outside firm can perform that and similar checks without providing the info. directly to NFS or some other third party with access to the programming. I would welcome NFS' thoughts on how that might be accomplished, if they have an interest in the proposal. I had some thought of a "download" of the database for a onetime access by the firm, but suspect there may be technological and legal [copyrights, for example] challenges.

I suggest we need to move on this with some speed. If you, Ted and Mike, would confer and let me know your thoughts on the proposal, and if appropriate which who would present it to NFS, I'd be most grateful.

Again, Tim or Mike S., please jump in quickly if I've somehow misunderstood or mistated the proposal.

Thanks, all.

Barry

-----Original Message-----

**From:** Maloney, Timothy P.  
**Sent:** Monday, June 07, 2004 8:57 AM  
**To:** Harris, Barry P.  
**Cc:** Santo, Michael  
**Subject:** RE: Wileys

Barry:  
 Spoke with Mike Santo this am. He will call you. We are in agreement that if NFS is comfortable with outside counsel review and certification we should pursue.

Tim

-----Original Message-----  
**From:** Harris, Barry P.  
**Sent:** Thursday, June 03, 2004 7:37 AM  
**To:** Maloney, Timothy P.  
**Subject:** Wileys  
**Importance:** High

Tim, one other issue occurred to me. The outside attorneys contemplated by Alan's alternative would need access to whatever systems/info. are necessary to "scrub" the beneficiaries against the "bad guy" lists. I don't think the systems/info. is generally available, and it could therefore be necessary for the id's of the beneficiaries to be provided to some third party to do the scrubbing. Under our processes, NFS does it for us generally, although we also have access to some BAC systems, as I understand it.

I'll try to get some info. from someone with more knowledge than I on how this could work.

Barry

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**From:** Harris, Barry P. [barry.harris@bankofamerica.com]  
**Sent:** Tuesday, July 20, 2004 11:32 AM  
**To:** Mariano, David  
**Subject:** FW: A/C Privileged—Wyley Offshore Trust Accounts—Update  
**Importance:** High

Sorry about the confusion, Dave. Again, under the privilege, please research these accounts. Since my last, I have learned that Mike Hearn is reviewing these accounts, on a different issue. Suggest that you start with him. As to your task, I would like an idea of issues under AML/Patriot Acts.

Thanks.

Barry

-----Original Message-----

**From:** Harris, Barry P.  
**Sent:** Thursday, July 15, 2004 6:06 PM  
**To:** Santo, Michael; Maloney, Timothy P.  
**Cc:** Strelby, Greg; Dorfman, Beth; Hechtlinger, Susan  
**Subject:** A/C Privileged—Wyley Offshore Trust Accounts—Update  
**Importance:** High

Attorney/client Privileged

I conferred again today with NFS Legal and AML Compliance personnel on these Isle of Mann Trusts. They are housing in Lori Bensing's Dallas HNW office. We understand that the beneficiaries of the numerous trusts are members of the Wyley family, whose patriarch is the CEO and a major shareholder in publicly-traded Michael's Stores.

To briefly recap the situation, the Wyleys have a substantial relationship with the PB. The Wyley family has established 10 or more Isle of Mann Trusts, principally funded, it appears, with Michael's stock. The Trusts have opened accounts with BAI/NFS. Some months ago, NFS became uncomfortable with the trading activity and cash transfers in these accounts. A basic concern was that the beneficiaries of the various trusts were unknown to NFS, and to BAI. They cannot perform the AML/Patriot Act due dilly without knowledge of the beneficiaries. The Wyleys were asked to identify the beneficiaries, and declined, stating that no current regulation specifically requires that information. [The regulations implementing the Patriot Act have not been released; it is clear, however, that when released they will require the names of beneficiaries in these circumstances.] I understand that the Wyleys were concerned that, if the beneficial interests were known, they could be subject to claims by unfriendly parties [ex-spouses were mentioned].

When I became involved, I understood the problem to be only the beneficiaries' identities.

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At Tim's suggestion, I approached NFS with the idea of retaining an outside, independent, lawyer to receive the ideas of the beneficiaries and perform whatever checks are required to satisfy the Patriot/AML concerns. The lawyer would report back to BAI and NFS.

I presented the proposal to NFS some weeks ago. I learned at that time that their concerns were much broader than merely identity. Specifically, they were equally concerned by the facts that the accounts were funded with Michael's stock, and possibly control or 144 restrictions applied; and that large cash positions were moving out of the accounts. There are periodic sales of significant blocks of Michael's stock from the accounts, and periodic movements of hundreds of thousands of dollars. On the sales, they are concerned that the stock is/should be somehow restricted under the US securities laws, given that the patriarch is a controlling person, or that at a minimum disclosures of the sales should be made under US law. The cash transfers have hit the NFS AML "suspicious movements" tripwires, unrelated to the lack of identity issue. Given their broader concerns, they agreed to take the idea of the outside attorney away to determine if it might somehow work.

Throughout my contacts with NFS, I have made it extremely clear that BAI is not asking them to forgo any activity or information they feel necessary to perform their obligations. They have in turn made it clear that, in their opinion, BAI as introducing broker should be concerned about these accounts, as well.

In the call today, they reported their conclusion that the proposal would not satisfy their needs on the trades and cash movements. We developed the following proposal: NFS will prepare written questions which they need answered to continue to support the accounts; BAI will add any questions which it believes need to be answered. I would forward the questions to the attorney representing the Wyley's and the trusts, informing them that we and NFS need answers within 30 days, or it will be necessary to ask them to move the accounts to another BD which can support them based upon the information which they are willing to share. I need your input on the proposal.

I believe we have hit the wall. NFS is extremely nervous about these accounts, if not for actual violations of Patriot/AML, for negative regulatory action based on the lack of info. and activity. NFS recently was cited on its AML procedures. If we proceed as suggested, we need to alert the PB on the decision, and possibly seek their assistance in getting the necessary information from the Wyley's.

I share NFS' concern that we are exposed here. While we frequently have the benefit of facts/knowledge of the PB in our AML due dilly efforts, we too don't know the identities of the beneficiaries. I additionally am concerned that the PB doesn't know of/is not involved in the sales and cash transfers, and therefore we have no comfort from that side.

At the end of the call, NFS briefly identified another series of accounts out of Lori's office that have the same problems---sans the "Michael's stock" problems. The accounts are offshore, with a Texas mailing address, opened in the names of "R2 Co.", "R3 Co.", "Acme Widget" [no

kidding], etc. There is substantial money movement out of and between the accounts. Once again, the clients are pushing back on identifying the beneficial owners, and apparently NFS feels it is getting little help or support from Lori or her staff.

Please let me have your thoughts and directions. Because of vacation schedules, NFS promised to get the written questions to me during the week of Aug. 8. Call, of course, if you wish to discuss.

Barry

**From:** Schaufele, Louis J.  
**Sent:** Tuesday, July 27, 2004 10:04 AM  
**To:** Bensing, Lori S.  
**Cc:** Crittenden, Michele M.  
**Subject:** RE: AML Inquiry - Account(s): Offshore Trident Trusts

See below: and I will send you what we think chandler provided.

-----Original Message-----

**From:** Bensing, Lori S.  
**Sent:** Tuesday, July 27, 2004 8:10 AM  
**To:** Schaufele, Louis J.  
**Subject:** FW: AML Inquiry - Account(s): Offshore Trident Trusts

We probalby need to check what information we provided risk committee on this as well but here are my answers off top of head. There were a couple of questions that i left blank I think Michele can answer. I think we need to see from Scott (prior to Friday) how big of a deal this is, maybe this is not as big as we think and this will suffice....(I am probably suffering from lack of oxygen). I will be in Thursday PM and Friday AM. Let me know what you think.

- 1) Client is an offshore corporation (OC)
- 2) The owner of the OC is a foreign grantor trust. The beneficiaries of the trust we understand are various family members of a wealthy Dallas family.
- 3) To the best of our knowledge, we have done business with most of these entities for over a +10yr period
- 4)
- 5) These OCs were set up intially for tax and confidentiality reasons. The growth in the OCs can compound tax free until the cash comes back to the direct beneficiary.
- 6+7) Trident Trust is nothing more than an administrator of the accounts. They staff the OCs with officers (president, VP and secy). They make the investment decscions for the OCs. They will be the adminstrators to multiple OCs. The beneficiaries have no investment decscion making ability. We recieve all orders and instruction from the appropriate officer of the OCs (which happen to be Trident personnel.
- 8) As stated earlier these entities are offshore corporation whose asset are owned by a foreign grantor trust. Realize that the trust here has nothing to do with with Trident Trust.
- 9) Do not need trust aggrement but we do have all corporate documents on file and would be happy to supply.
- 10)
- 11) Generally the wires that are made are for different investments: be that in real estate of hedge funds or other investments. The client would be willing to make know when we wire funds as to what the funds are for, such as real estate in dallas or purchase of XYZ equity.
- 12) The large holding of MIK was due to the fact that when the OCs were established they were the owner of MIK stock. Then the stock has been monetized over the years to provide diversification and other investments. Agian one of the reasons for the formation of an OC was tax deferral (growth in MIK stock).
- 13) The gentleman listed in your inquiry are employees of Trident but act as officers of various OCs, this is part of the service that Trident offers to their clients.

-----Original Message-----

**From:** Hursh, Margo J.  
**Sent:** Friday, July 23, 2004 6:18 PM  
**To:** White, Phil; Bensing, Lori S.; Wollard, Denise L.  
**Cc:** Mariano, David; Hudgins, Steven E.; LaBelle, Jacque A; Chandler, Scott  
**Subject:** AML Inquiry - Account(s): Offshore Trident Trusts

#### Surveillance Compliance AML Inquiry

Good Afternoon Everyone-

Please respond to the following questions regarding the accounts listed below.

- (1) Who is the client?
- (2) Who are the beneficial owners, clients, principals, etc. of each account? Why are the names of the accounts so

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EXHIBIT #21t

BA 067911



unusual?

(3) Is there proper and complete account documentation on file for each of these accounts?

(4) There was some question as to exactly which W-8 form needed to be completed, has that issue been resolved and are the copies of the correct W-8 available for each beneficial owner?

(5) What is the nature of the business?

(6) Is there a financial institution involved? Specifically, describe Trident Trust and what they offer. Also, explain their involvement with charities; little information is available.

(7) What is Trident's role and involvement with these accounts? Are they acting in a agent or fiduciary capacity on behalf of the client?

(8) Is there a structure with the trust or other investment vehicles? If so, please explain in detail.

(9) In addition to account paperwork for each account, is there a copy of the actual trust agreement/articles of incorporation on file?

(10) Have KYC forms (online tool) been completed on each of these accounts? Policy requires one form for each beneficial owner, as well as, one for each entity.

(11) Please describe the wire activity in the accounts. Specifically, where are the funds going to, coming from, etc. For instance, please don't just respond: Citigroup. I can see that... I need details.

(12) Please provide an explanation regarding the large positions in Michael's (MIK)

(13) Who are Webb, Plowman, and Mundy?

Please respond in writing to each question and return the completed response within five business days.

Client: Trident Trust Accounts; FA: (P86-2XT) Lou Schaufele

Account Number(s):

Redacted By Permanent Subcommittee on Investigations	CSH	CP	ELEGANCE I	\$51,901,461
	CSH	TRUA	& TYLER TRU	\$0
	CSH	CP	ELYSIUM LI	\$30,186
	MGN	CP	SOULIEANA	\$7,095,541
	CSH	CP	RAMONA LTD	\$90
	CSH	CP	RUGOSA LIM	\$22,230
	MGN	CP	QUAYLE LTD	\$9,966,019
	CSH	CP	LITTLE WOOD	\$587
	CSH	CP	ROARING CR	\$343
	CSH	CP	ROARING FO	\$88,923
	CSH	CP	EAST BATON	\$116,968
	CSH	CP	MOREHOUSE	\$201,416
	CSH	CP	RELISH ENT	\$19,052
	CSH	CP	YURTA FAF	\$31,773
	MGN	CP	DEVOTION L	\$65,111
	CSH	CP	&ARAKAN LI	\$0
	CSH	CP	AUDUBON AS	\$0
	CSH	CP	EAST CARRO	\$13,908
	CSH	CP	GREENBRIAR	\$118,547
	CSH	CP	WEST CARRO	\$65,627
	CSH	CP	LOCKE LIM	\$23,850
	CSH	CP	RICHLAND L	\$229,354
	CSH	CP	TENSAS LIM	\$224,687
	CSH	CP	MOBERLY LT	\$85,158
	CSH	CP	VASPER LIM	\$3
	MGN	CP	DORTMUND L	\$763,836
	CSH	CP	SARNIA INV	\$13,573

Margo J. Hursh

Senior Compliance Officer

Banc of America Investment Services, Inc.

NC1-002-19-44

(704) 386-9732 phone

(704) 388-8022 fax

Compliance: It's everybody's business at Bank of America.



To: Barry Harris  
Chief Counsel  
Bank of America Investment Services, Inc.

From: Steve Ganis  
Anti-Money Laundering Officer  
National Financial Services LLC

cc: Jai Chanda  
Karen O'Toole  
Jen Moran  
Tori Dunham  
Dave Tesconi

Date: September 22, 2004  
Subject: Requests Concerning Certain Bank of America Accounts

Per your request, here follows a list of questions to be answered and information to be provided in order to understand certain activity patterns in certain accounts introduced to National Financial Services LLC ("NFS") by Bank of America Investment Securities, Inc. Complete responses to the items set forth herein will be necessary for NFS to assess fully its regulatory obligations.

- Please provide the foreign government issued identification number, if any, for each entity (each, a "Direct Owner") to which one of the following accounts (the "Accounts") has been registered. If any Direct Owner organized outside the U.S. lacks an identification number issued by the government of the nation where such Direct Owner is organized, please explain why.

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- ELEGANCE LTD
- QUAYLE LTD
- SOULIEANA LTD
- KATY LLC
- BALCH LLC
- POPS LLC
- ORANGE LLC
- FLO FLO
- BUBBA LLC
- DORTMUND LTD
- DEVOTION LTD
- ELYSIUM LIMITED
- FIRST DALLAS INTERNATIONAL LTD
- RELISH LTD
- LITTLE WOODY LIMITED
- ROARING FORK LIMITED
- ROARING CREEK LIMITED
- EAST CARROLL LTD
- WEST CARROLL LTD
- ALTONCO INTERNATIONAL LTD
- TWO OCEANS LIMITED
- BROWN DOG LIMITED

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LOCKE LIMITED  
RICHLAND  
VASPER  
SARNIA  
IRISH TRUST

- Please provide the name, physical (not post office box) address, U.S. tax identification number (if any), and foreign government issued identification number (if any) (collectively, the "Entity Information") for any entity (each, an "Indirect Ownership Vehicle") that directly or indirectly owns in whole or in part or otherwise controls any Direct Owner. If any Indirect Ownership Vehicle organized outside the U.S. lacks an identification number issued by the government of the nation where such Direct Owner is organized, please explain why.
- Please provide the name, date of birth, address, citizenship, U.S. social security number (if any), and foreign government-issued identification number (if any) (collectively, the "Personal Information") for each natural person (each, an "Indirect Owner") who directly or indirectly holds any ownership interest under the law of any country in each Direct Owner or in any Indirect Ownership Vehicle, or who otherwise owns or controls any funds or assets contained in each of the Accounts.
- Please confirm which nation is the legal domicile of each Direct Owner and any Indirect Ownership Vehicle (i.e., which nation's laws each is organized under).
- If any Indirect Ownership Vehicle is a trust, please provide the Entity Information or the Personal Information, as appropriate, for each grantor, settlor, trustee, beneficiary, protector, or other entity or natural person with any control over the trust for each such Indirect Ownership Vehicle. Excluded from this request would be Entity Information for a trustee of an Indirect Ownership Vehicle if such trustee is a bank or trust company (or employee thereof) for which Bank of America has obtained, and shared with National Financial Services LLC a copy of, a fully completed in good order U.S. Treasury Department foreign bank certification form adequate to cover the Account in question.
- To the extent that the same Indirect Owner or group of Indirect Owners directly or indirectly owns or controls more than one of the Direct Owners, why have multiple Direct Owners been organized and multiple Accounts established? Explain where possible the business or economic purpose of such a structure.
- Who decided to organize the Direct Owners and any offshore Indirect Ownership Vehicles outside the U.S.? Why? Please be as specific as possible about any economic, service quality, tax, asset protection, secrecy, or other advantages derived from having organized such entities outside the U.S.
- What is the source of wealth of each Indirect Owner?
- What is the source of funds deposited into, or used to purchase assets deposited into, the Accounts? Please provide as many details as possible.
- There have been many offshore wire transfers from the Accounts to like-registered accounts maintained for the Direct Owners, typically in the Isle of Man. Please explain the purpose of such transfers providing as many details as possible, including each beneficiary, purpose destination of any subsequent transfers of the same funds.
- Have any of the funds transmitted by wire transfer transfers from the Accounts to like-registered non-U.S. accounts maintained for the Direct Owners been or will they be subsequently repatriated (i.e., transmitted by any means to the U.S., including to accounts maintained at any financial institutions in the U.S.)? If so, please:
  - indicate any persons or entities who received or will receive the funds in the U.S.;

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- provide the registration information for any accounts anywhere through which the funds are transmitted to the in the U.S.;
- provide the registration information for any accounts in the U.S. that ultimately receive the funds;
- explain the purpose of sending the funds offshore and then transmitting them back to the U.S.;
- explain how the funds will be used when transmitted back to the U.S.; and
- indicate whether any of the funds transferred from the Accounts to offshore accounts have been or will be converted into physical currency of any nation or monetary instruments.
- There have been inter-account journal transfers of stock and money among some of the Accounts. Please explain the purpose of such transfers, including each of the transfers listed on the attached spreadsheet, providing as many details as possible. Do such transfers cause ultimate ownership interests in the stock or money to change among different Indirect Owners or Indirect Ownership Vehicles or just the nominal ownership of the stock or money to change among different Direct Owners?
- To what extent have any of the Direct Owners, Indirect Ownership Vehicles or Indirect Owners been subjects of litigation or enforcement actions by any government alleging any of the following?
  - violations of the U.S. federal or state securities laws;
  - violations of any U.S. state corporation laws;
  - violations of the U.S. Internal Revenue Code;
  - corruption;
  - fraud
  - money laundering;
  - terrorist financing; or
  - other financial crime.
- Please indicate whether any Indirect Owner of one or more of the following accounts (the "MIK Accounts") is or has been an employee, officer, or director or a relative of an employee, officer, or director (each, a "MIK Insider") of Michaels Stores Inc.

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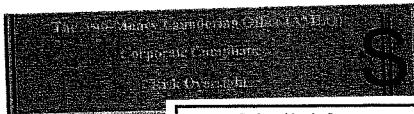
ELEGANCE LTD  
QUAYLE LTD  
SOULIEANA LTD  
KATY LLC  
BALCH LLC  
POPS LLC  
ORANGE LLC  
FLO FLO  
BUBBA LLC  
DORTMUND LTD  
DEVOTION LTD

- To the extent any Indirect Owner ultimately owns more than one of the MIK Accounts, explain why have multiple MIK Accounts been established to hold the same security, explaining where possible the business or economic purpose of such a structure.
- Please list any title and dates of employment or service at Michaels Stores Inc. for each Indirect Owner of one or more MIK Accounts or relative of an Indirect Owner of one or more MIK Accounts who is or has been an employee, officer, or director of Michaels Stores Inc.

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Please describe any family relationships between each Indirect Owner of one or more of the MIK Accounts and any MIK Insiders.

- Why has the ownership of stock issued by Michaels Stores Inc. ("MIK Stock") by the Indirect Owners of the MIK Accounts been structured using the Direct Owners and any Indirect Ownership Vehicles?
- In addition to the MIK Stock held in the Accounts, do any of the Direct Owners, Indirect Ownership Vehicles, or Indirect Owners of any of the Accounts directly or indirectly own any securities issued by Michaels Stores Inc. anywhere in any account or in physical certificate form?
- Why have the Indirect Owners of the MIK Accounts chosen not to hold the MIK Stock in directly under such Indirect Owner's true name?
- What is the source of the MIK Stock held in the MIK Accounts? Please provide details. Were the shares of MIK Stock in the MIK Accounts, or any options used to acquire such shares, issued by Michaels Stores Inc. directly to any Direct Owner, Indirect Ownership Vehicle, or Indirect Owner? If so, which ones? To what extent did Michaels Stores Inc. disclose any direct issuance of MIK securities to any Direct Owner, Indirect Ownership Vehicle, or Indirect Owner in SEC filings? (Please provide relevant portions of each such filing.) Were any such MIK Stock shares or options used to acquire such MIK Stock purchased on the market?
- Are any of the shares of MIK Stock in any of the MIK Accounts control stock or restricted stock? If so, please provide details. If not, were any such shares previously restricted? If so, please explain when and how they became unrestricted, if applicable.
- Why has Michaels Stores Inc. not disclosed recent sales or intended sales of MIK stock from the Accounts (e.g., 100,000 shares sold from account [REDACTED] on 9/2/03) in its Securities and Exchange Commission ("SEC") filings as it previously disclosed intended sales by certain of the Direct Owners in the issuer's 1997 SEC filings?
- Please explain why any indirect, offshore ownership of millions of dollars worth of MIK Stock by MIK Insiders who are Indirect Owners of the MIK Accounts is consistent with U.S. securities laws and regulations (including the Securities Act of 1933 and Securities Exchange Act of 1934) and other federal and state laws regulating disclosures to investors by, and the corporate governance of, Michaels Stores Inc.
- What is the purpose of the following transactions? To what extent did the ultimate ownership interests in the transferred money change as a result of the following transactions? What are the legal and business relationships between the entities involved in each of the following transactions?
  - journals between account [REDACTED] (Elegance Ltd.) and [REDACTED] (Souleiana Ltd.);
  - journals between account [REDACTED] (Elegance Ltd.) and [REDACTED] (First Dallas International Ltd.);
  - wires from account [REDACTED] (Altonco International Ltd.) to ABL Strategies Ltd., Maverick Stable Fund, and Nautica International;
  - wires from account [REDACTED] (Altonco International Ltd.) from Queensgate Bank and Fund Administration Holdings LLC (Cayman);
  - wire from account [REDACTED] (Relish Ltd.) to LaFourche Trust;
  - journal from account [REDACTED] (Altonco International Ltd.) to account [REDACTED] (Michelle Boucher); same day journals from account [REDACTED] (Michelle Boucher) to account [REDACTED] (Brown Dog Ltd.) and account [REDACTED] (Two Oceans Ltd.);
  - wire from account [REDACTED] (Bubba LLC) to Rosemary's Circle R Management Trust;
  - wire from CT Ranger Multi-Strategy Ltd. to account [REDACTED] (Devotion Ltd.); and

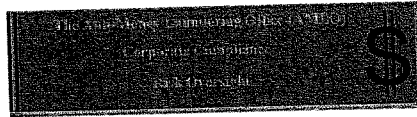
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- wire from account [REDACTED] (Dortmund Ltd.) to WAB Fund LP.
- What is the purpose of the wires from account [REDACTED] (Devotion Ltd.) to the following entities? What is the relationship between Devotion Ltd. and the following entities?
- La Fourche Trust (via Bank of Bermuda, Isle of Man)
- Red River Ventures I LP (via Frost National Bank, San Antonio)

[REDACTED] = Redacted by the Permanent  
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From: Moran, Jennifer [Jennifer.Moran@FMR.COM]  
 Sent: Thursday, October 14, 2004 2:10 PM  
 To: Barry.Harris@bankofamerica.com; Chanda, Jaidip  
 Subject: Re: new copy for Barry Harris -- MIK questions for BofA.doc

Hi barry  
 Sorry for the delay  
 While I understand the politics we feel that this is your customer and that the list of questions should come from you as broker dealer  
 Please call if you wish to discuss

Otherwise if you can keep me in the loop on your progress

Thanks  
 Jen

-----  
 Sent from my BlackBerry Wireless Handheld

-----Original Message-----  
 From: Harris, Barry P. <Barry.Harris@bankofamerica.com>  
 To: Moran, Jennifer <Jennifer.Moran@FMR.COM>; Chanda, Jaidip <Jaidip.Chanda@fmr.com>  
 Sent: Mon Oct 11 15:55:50 2004  
 Subject: RE: new copy for Barry Harris -- MIK questions for BofA.doc

Jay and Jen, in the interest to keep this moving, I have a question to pose while I study Steve's questions to determine if we needed to add anything [frankly, on first full read I can't imagine we do]. While I understand and appreciate the need for the info requested by Steve, I also know the politics of life here at BAC. We had originally discussed me/BAI posing the questions to the customers' lawyer. I suspect I will get pushback in a major sense from the Private Bank/High Net Worth people if the questions appear to come from me/BAI.

Would you be willing to put Steve's questions in a letter to me/BAI, saying that you need the info. and will not be able to carry the accounts, given AML/Patriot Act concerns, unless you receive acceptable answers? I can then forward to the clients' lawyer. This would permit me to deflect the barrage that will come from PB/HNW, and hopefully get us where we both want to be.

Bounce that around and let me hear back. I'll finish up with Steve's, but again I suspect I will have no additional questions.

B.

-----Original Message-----  
 From: Moran, Jennifer [mailto:Jennifer.Moran@FMR.COM]  
 Sent: Monday, October 11, 2004 7:51 AM  
 To: Barry.Harris@bankofamerica.com  
 Subject: FW: new copy for Barry Harris -- MIK questions for BofA.doc

Hi Barry, attached is another copy of the questions for MIK. Please let us know when you want to chat as to your findings and ultimate recommendation. As I mentioned, this is getting increased exposure at Fidelity. Thanks Jen

Permanent Subcommittee on Investigations  
**EXHIBIT #21v**

BA 08684

-----Original Message-----  
 From: Ganis, Stephen  
 Sent: Thursday, October 07, 2004 6:33 PM  
 To: Moran, Jennifer  
 Cc: Chanda, Jaidip; O'Toole, Karen M.(Legal)  
 Subject: new copy for Barry Harris -- MIK questions for BofA.doc

<MIK questions for BofA.doc>

\*\*\*\*\*

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.....  
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[https://www.bankofamerica.com/privacy/index.cfm?template=privacysecur\\_set\\_privacy\\_pref](https://www.bankofamerica.com/privacy/index.cfm?template=privacysecur_set_privacy_pref)  
 .....

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**From:** White, Phil [phil.white@bankofamerica.com]  
**Sent:** Friday, October 15, 2004 5:24 PM  
**To:** Maloney, Timothy P.  
**Subject:** FW: Michaels Stores

Tim, from our conversation yesterday, I gathered that "supervision" of these was an issue for NFS. And I have asked Lou to do some homework on how often they move stock. It has only happened once and he doesn't anticipate it happening again. And as he points out, the transfer agent isn't going to allow legend stock to be moved. I really believe that if we can't accommodate these folks somehow, we're putting a very large relationship at risk. I wanted you to have this before our conversation Monday.

-----Original Message-----

**From:** Schaufele, Louis J.  
**Sent:** Friday, October 15, 2004 2:17 PM  
**To:** White, Phil  
**Cc:** Chandler, Scott; Bensing, Lori S.  
**Subject:** Michaels Stores

It seems that 144 and affiliation is a question along with AML issues. I gathered that a comment is that they move stock all the time from entity to entity. In checking our notes we can only find one instance where they moved stock was only one time, they moved 25k shares from one account to another (with proper documentation). Having dealt with these entities for several years this is a very rare event. First on the 144 issue, the stock was transferred in here (BoFA) clean with out a legend. Usually a transfer agent is a good source as to whether certificates are legended or not. The other side of this is that the Wyly's do not claim ownership of this stock in any proxy materials. At one point we talked about getting a statement from corporate counsel that says that this is not affiliate stock (however I think we can tell that without it and are really asking the client to go above and beyond).

In regard to the beneficiary issues, I do not think they will give us the names (they have told me this as recently as last week). I do think we can get them to complete NFS' questionnaire with out the beneficiaries. I have had discussions with the protectorate and think that they would be willing to go to an independent party (lawyer type) to give some letter that says that beneficiaries are not on any AML list. Actually they have already done this with an Isle of Man attorney.

Hopefully we can figure this out, the clients have opened accounts at other US financial institutions in 2004. I have attached a dated email that covers some of this, read all entries and also the recent proxy.



RE: need some PRINCIPAL  
 offshore help CXHOLDERS AND M

thanks

Lou Schaufele  
 Managing Director / Investments  
 Private Client Advisor  
 Bank of America Private Bank  
 Banc of America Investment Services, Inc.  
 214 303 2816  
 214-303-2980 fax

Permanent Subcommittee on Investigations

EXHIBIT #21w

BA 14884

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**From:** Hearn, Mike  
**Sent:** Friday, March 26, 2004 10:58 AM  
**To:** Schaufele, Louis J.  
**Subject:** RE: need some offshore help

will do if it is in a written form that is that clear..... hope it is, Mike

-----Original Message-----

**From:** Schaufele, Louis J.  
**Sent:** Friday, March 26, 2004 10:53 AM  
**To:** Hearn, Mike  
**Subject:** RE: need some offshore help

If that is the case could you get me the actual ruling so I can show the client.  
 thanks

-----Original Message-----

**From:** Hearn, Mike  
**Sent:** Friday, March 26, 2004 9:51 AM  
**To:** Schaufele, Louis J.; Harris, Barry P.; Bensing, Lori S.  
**Cc:** Mitchell, David  
**Subject:** RE: need some offshore help

I will ask one of the patriot act experts to see what they say about this type of account, but my best guess is that we would need the names and SS numbers for all the adult benies, as there is not a US based financial institutions between us and the ultimate clients... will let you know, Mike

-----Original Message-----

**From:** Schaufele, Louis J.  
**Sent:** Friday, March 26, 2004 10:29 AM  
**To:** Harris, Barry P.; Bensing, Lori S.; Hearn, Mike  
**Subject:** RE: need some offshore help

Is it sufficient to say that the beneficiaries of the trust are members of the Charles Wyly family and their immediate children and grandchildren subject to the discretion of the trustee?

-----Original Message-----

**From:** Harris, Barry P.  
**Sent:** Thursday, March 25, 2004 6:21 PM  
**To:** Bensing, Lori S.; Hearn, Mike  
**Cc:** Schaufele, Louis J.; Hudgins, Steven E.; Wellard, Denise L.; Bowden, Theodore I.; Schroder, Alan; Hechtlinger, Susan; Rusnak, Geoff  
**Subject:** Re: need some offshore help  
**Importance:** High

Lori, I think you have I'd'ed 2 distinct issues. On the first, I would assume that a letter from the corp GC wou satisfy NFS that the stock is neither control nor restricted.

The second, AML/Patriot Act, more problematic. I presume the trustee is not BofA. If not, I believe that our policies require that we know the I'd of all beneficiaries as is required by law. If the trustees or beneficiaries are unwilling to disclose, I believe that leaves us and NFS with little option. The regulators leave us virtually no room, and a failure to follow our own policies (if I am correct on them) would be a significant breach in this sensitive area.

Mike/Susan/Geoff, your thoughts and expertise?

Barry

-----  
Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Bensing, Lori S. <lori.s.bensing@bankofamerica.com>  
To: Harris, Barry P. <Barry.Harris@BankofAmerica.com>; Hearn, Mike  
<Mike.Hearn@BankofAmerica.com>  
CC: Schaufele, Louis J. <louis.j.schaufele@bankofamerica.com>; Hudgins, Steven E,  
<Steven.Hudgins@BankofAmerica.com>; Wollard, Denise L.  
<denise.l.wollard@bankofamerica.com>  
Sent: Thu Mar 25 17:43:15 2004  
Subject: need some offshore help

Jim Dwiggins suggested floating this out to both of you.  
At conversion, Barry you may remember that we got approval to hold several Isle of Man accounts. We have been experiencing a lot of difficulty with NFS on these accounts since conversion and in particular 10 accounts that hold MIK stock (Michael's Stores). These accounts were created a number of years ago by trusts and according to the directorate the accounts share several of the same beneficiaries (various Wyly Family members and various charities). In short, NFS thinks that there might be Patriot Act issues and that the stock might be affiliated in some way. MUCH of their misunderstanding stems from a general lack of knowledge of the purpose and benefits of offshore accounts. The stock transferred in as clean stock but if need be we can go to corporate counsel for Michaels and get an opinion (1.7mm shares total) or statement that the shares are not affiliated. We can also go to the Isle of Man attorney for these accounts and get some letter that states that the beneficiaries are not terrorists. What we probably cannot do is get a list of the names, addresses and social security numbers of the beneficiaries. I am afraid that if we can't provide this that they may tell us to move the accounts. We may need someone from legal to help us with this (I should mention that BAI compliance is satisfied). Your thoughts?

Lori Bensing  
Managing Director, Sales Manager  
Bank of America Private Bank  
Bank of America Investment Services, Inc.  
214-220-3405 ph  
214-220-3418 fax

## PRINCIPAL STOCKHOLDERS AND MANAGEMENT OWNERSHIP

The following table sets forth information as of March 31, 2004 regarding the beneficial ownership of common stock by each person known by Michaels to own 5% or more of the outstanding shares of common stock, each director of Michaels, each Named Executive (as defined in "Management Compensation — Summary Compensation Table" herein), and the directors and executive officers of Michaels as a group. The persons named in the table have sole voting and investment power with respect to all shares of common stock owned by them, unless otherwise noted. The percentage of beneficial ownership is calculated based on 68,336,733 shares of common stock outstanding as of March 31, 2004.

Name of Beneficial Owner	Amount and Nature of Beneficial Ownership(1)	Percent of Class
Charles J. Wyly, Jr.	1,479,859 (2)	2.2%
Sam Wyly	1,357,333 (3)	2.0%
Richard E. Hanlon	101,300 (4)	*
Richard C. Marcus	77,000 (5)	*
Liz Minyard	52,500 (6)	*
Cece Smith	35,000 (7)	*
R. Michael Rouleau	534,693 (8)	*
Jeffrey N. Boyer	25,000 (9)	*
Edward F. Sadler	129,166 (10)	*
Ronald S. Staffieri	33,333 (11)	*
Capital Research and Management Company 333 South Hope Street Los Angeles, California 90071	9,528,000 (12)	13.9%
First Pacific Advisors, Inc. 11400 West Olympic Boulevard Suite 1200 Los Angeles, California 90064	3,618,700 (13)	5.3%
Putnam, LLC d/b/a Putnam Investments One Post Office Square Boston, Massachusetts 02109	4,496,106 (14)	6.6%
Wellington Management Company, LLP 75 State Street Boston, Massachusetts 02109	6,234,780 (15)	9.1%
All current directors and executive officers as a group (22 persons)	4,083,311 (16)	5.8%

\* Less than one percent.

- (1) Pursuant to Rule 13d-3 under the Securities Exchange Act of 1934, a person has beneficial ownership of any securities as to which such person, directly or indirectly, through any contract, arrangement, undertaking, relationship or otherwise has or shares voting power and/or investment power or as to which such person has the right to acquire such voting and/or investment power within 60 days. Percentage of beneficial ownership by a person as of a particular date is calculated by dividing the number of shares beneficially owned by such person by the sum of the number of shares outstanding as of such date and the number of unissued shares as to which such person has the right to acquire voting and/or investment power within 60 days. The number of shares shown includes outstanding shares of common stock owned as of March 31, 2004 by the person indicated and shares underlying options owned by such person on March 31, 2004 that are exercisable within 60 days of that date. Persons holding shares of common stock pursuant to the Michaels Stores, Inc. Employees 401(k) Plan, as amended and restated, have sole voting power and investment power with respect to such shares.

- (2) Includes 336,666 shares under options; 380,205 shares held of record by Stargate, Ltd. (a limited partnership, the general partner of which is a trust of which Mr. Wyly is one of the trustees); 207,604 shares held of record by Shadywood USA, Ltd. (a limited partnership of which Mr. Wyly is the general partner); and 555,284 shares held of record by family trusts of which Mr. Wyly is the trustee.
- (3) Includes 353,332 shares under options; 200,000 shares held of record by Tallulah, Ltd. (a limited partnership of which Mr. Wyly is the general partner); 149,572 shares held of record by family trusts of which Mr. Wyly is the trustee; and 14,020 shares owned by Mr. Wyly's spouse.
- (4) Includes 70,000 shares under options and 10,167 shares held of record by a family trust of which Mr. Hanlon is a co-trustee.
- (5) Includes 70,000 shares under options.
- (6) Includes 52,500 shares under options.
- (7) Includes 35,000 shares under options.
- (8) Includes 466,666 shares under options; 6,039 shares owned pursuant to our 401(k) Plan; and 20,000 shares which Mr. Rouleau owns jointly with his spouse.
- (9) Includes 25,000 shares under options.
- (10) Includes 129,166 shares under options.
- (11) Includes 33,333 shares under options.
- (12) Based on an amendment to a Schedule 13G filed with the Securities and Exchange Commission, dated February 10, 2004, Capital Research and Management Company, a registered investment adviser, has the sole power to dispose or direct the disposition of 9,528,000 shares of common stock but has no power to vote or direct the vote of such shares.
- (13) Based on a Schedule 13G filed with the Securities and Exchange Commission, dated February 5, 2004, First Pacific Advisors, Inc., an investment advisor, shares the power to vote or direct the vote of 1,496,100 shares of common stock and shares the power to dispose or direct the disposition of 3,618,700 shares of common stock.
- (14) Based on an amendment to a Schedule 13G filed with the Securities and Exchange Commission, dated February 9, 2004, Putnam, LLC d/b/a Putnam Investments, on behalf of itself and its parent and wholly-owned subsidiaries in their various capacities, shares the power to vote or direct the vote of 303,405 shares of common stock and shares the power to dispose or direct the disposition of 4,496,106 shares of common stock.
- (15) Based on a Schedule 13G filed with the Securities and Exchange Commission, dated February 13, 2004, Wellington Management Company, LLP, an investment advisor, shares the power to vote or direct the vote of 4,895,660 shares of common stock and shares the power to dispose or direct the disposition of 6,234,780 shares of common stock.
- (16) Includes 1,794,243 shares under options; 10,848 shares owned pursuant to our 401(k) Plan held by executive officers, some of whom are not named in the table; and 1,080 shares an executive officer not named in the table owns jointly with his spouse.

JUL 26 2005 09:50 FR BAI SERVICES

6174348108 TO 912124503744

P.10

## Bank of America



Timothy P. Maloney  
Central Region President  
Private Bank

Bank of America, N.A.  
IL: 231-03-50  
231 South LaSalle Street  
Chicago, IL 60697

Tel 312.828.3165  
Fax 312.974.3040

October 22, 2004

Mr. Francis Webb  
Trident Trust Company  
P.O. Box 175  
12-14 Finch Road  
Douglas IM99 ITT  
Isle of Man

Dear Mr. Webb:

As we have discussed in the past, it is necessary for Bank of America to obtain the information for each entity, natural person or trust that directly or indirectly owns, controls or holds a beneficial ownership interest in whole or in part in any of the accounts listed below. The specific information we need is:

- (i) Name,
- (ii) physical address (primary residence for individuals or primary business address for legal entities),
- (iii) date of birth, (for individuals only); and
- (iv) identification number (a U.S. taxpayer identification number or social security number for a U.S. person; a U.S. taxpayer identification number, social security number or foreign government issued identification number (such as a passport number) for non-U.S. persons).

Please return this information no later than Friday, October 29, 2004. Please forward this information to my personal attention at:

Timothy P. Maloney  
Bank of America  
Mail Code: IL1-23-103-50  
231 South LaSalle Street  
Chicago, IL 60697



10/22/04 9:17 AM  
10/22/04 9:17 AM  
10/22/04 9:17 AM

Permanent Subcommittee on Investigations  
EXHIBIT #21x

BA 1491

JUL 26 2005 08:50 FR BAI SERVICES

6174348108 TO 912124503744

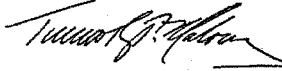
P.11

The accounts in question are:

<u>Name</u>	<u>Account Number</u>
Elysium Ltd.	P86-017000
Little Woody Ltd.	P86-017051
Quayle Ltd.	P86-017043
Ramona Ltd.	P86-017027
Roaring Creek Ltd.	P86-017060
Roaring Fork	P86-017078
Rugosa	P86-017035
Soulicana	P86-017019
Tyler Trust	P86-016993

I greatly appreciate your cooperation with this important matter. Thank you very much.

Very truly yours,



OCT 29 2004 08:40 FR BANK OF AMERICA

E312 974 3040 TO 917046025868

P.02


**TRIDENT TRUST**  
 ISLE OF MAN

TRIDENT TRUST COMPANY (I.O.M.) LTD

 P.O. Box 178  
 12-14 Finch Road  
 Douglas IM90 1TT  
 Isle of Man  
 British Isles  
 Tel: +44-1624-646700  
 Fax: +44-1624-628988  
 Email: info@tridenttrust.com  
 www.tridenttrust.com

Our Ref: fwp/jn-107303-004L

29 October 2004

 Mr Timothy P Maloney  
 Bank of America  
 Mail Code: IL 1-231-03-50  
 231 South LaSalle Street  
 Chicago, IL 60697  
 United States of America

 Transmitted by Facsimile  
 To: +1 - 312 -974-3040  
 Original will not follow

Dear Mr Maloney

I confirm receipt of your letter dated 22 October 2004. In connection with your request for information regarding the beneficial interest in the accounts noted therein, please clarify the following items:

- Why the information is being requested.
- Under what legal authority is the request for the information being made, and provide a copy of such authority
- How Bank of America intends to use this information, including to whom such information may ultimately be disseminated.
- The controls Bank of America undertakes to ensure the confidentiality and integrity of this information is maintained and provide a written description of the controls and confirmation that such controls are in place.

I look forward to hearing from you in due course.

Yours sincerely

 F WEBB  
 Company Secretary/Authorised Signatory

A MEMBER OF THE TRIDENT TRUST GROUP

 BANAMAS • BARBADOS • BRITISH VIRGIN ISLANDS • CAYMAN ISLANDS • CYPRUS • GUERNSEY • HONG KONG  
 ISLE OF MAN • JERSEY • MAURITIUS • SWITZERLAND • UNITED KINGDOM • UNITED STATES • U.S. VIRGIN ISLANDS

DIRECTORS D.M. BATES (C.B. &amp; S.A.), C.J. MURPHY (C.B.), A.P. FARMAN (C.B.)

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 LICENSED BY THE ISLE OF MAN FINANCIAL SUPERVISION COMMISSION AS A CONTINUITY SERVICE PROVIDER

OCT 29 2004 08:36

Permanent Subcommittee on Investigations

EXHIBIT #21y



**Michelle L. Boucher**  
**P.O. Box 2299GT**  
**74 Antoinette Avenue, South Sound**  
**Grand Cayman, Cayman Islands**  
**(345) 946 9435**  
**(345) 949-2519 fax**

November 5<sup>th</sup>, 2004

Mr. Timothy P. Maloney  
 Bank of America  
 Mail Code: IL 1-231-03-50  
 231 South LaSalle Street  
 Chicago, IL 60697

via facsimile 312-974-3040  
 cc: Lou Schaufele via facsimile 214-303-2980

Dear Mr. Maloney,

I confirm receipt of your letter dated October 29<sup>th</sup>, 2004 regarding the following accounts:

Redacted by the Permanent  
 Subcommittee on Investigations

Altonco International Limited  
 Brown Dog Limited  
 Two Oceans Limited

As you are aware, my attorney has had an opportunity to speak with yourself and Bank of America's legal counsel this week.

By way of background, and despite the fact that you have not asked, I am a Chartered Accountant, and employed as the Chief Financial Officer and Money Laundering Reporting Officer (MLRO) for the Irish Trust Company (Cayman) Limited. We provide Fund Administration services to the offshore funds of one of the 5<sup>th</sup> largest Private Hedge Fund Complexes in the United States. In addition to the accounting and other statutory services we provide, we are responsible to ensure that the due diligence performed on the funds' investors comply with the Cayman Proceeds of Criminal Conduct Law and Anti Money Laundering Legislation, and are the front line source for the investment manager (who is registered with the SEC) to obtain due diligence in compliance with the Patriot Act.

As you are aware, Cayman is the 5<sup>th</sup> largest financial centre in the world, focusing its business on mutual fund administration and financing structures for international financial institutions. This legislation is premier legislation in the foreign banking and investment community and far surpasses any legislation the United States has undertaken in adopting the Patriot Act. In my capacity as MLRO, we have worked with over 700 investors (US domestic tax exempt entities and foreign) comprising an asset base of over \$5Billion.

Given my vast experience in these matters I would like to say that the manner in which your institution has dealt with the due diligence collection process on the above accounts appalls and enrages me. I find it wholly unprofessional and disrespectful. There has clearly

Permanent Subcommittee on Investigations  
 EXHIBIT #21z

NOV 05 2004 15:06

NOV 08 2004 07:55 FR BANK OF AMERICA  
11/08/04 FRI 10:04 FAX

B312 974 3040 TO 917046025868  
Boucher

P.03

— = Redacted by the Permanent  
Subcommittee on Investigations

been no attempt to actually get to 'know your customer' or to work with your customer to determine what reasonable outcome we can achieve together.

With regard to the specific accounts referred to above, the first instance in which I was aware that you desired additional information regarding the beneficial owners was upon receipt of your letter dated October 22<sup>nd</sup>. I was traveling the week of October 25<sup>th</sup>, and responded at my earliest convenience on October 29<sup>th</sup>. The information and clarifications asked for in my letter of October 29<sup>th</sup> are wholly reasonable in context of your request. I would be negligent to not have asked them, and am certain that you, or any reasonable person, would do the same. I am offended by your effective lack of response and consideration as demonstrated in your reply letter of October 29<sup>th</sup>, and even further shocked by your attorney's position of 'we just want it and are not willing to discuss the matter further' which was communicated to me by way of my attorney yesterday.

Clearly your institution does not care about my business, for that I am sorry. I am 37 years old, have built the Irish Trust business from the ground during the past 9 years and in 1998 co-founded and served as the CFO for Scottish Annuity & Life Holdings, Ltd (now SCT Scottish Re) which launched its IPO in November 1998. In the mid '90's my husband developed software used by hedge funds to manage their share registers, calculate performance fees including hurdle rates, equalization mechanisms and series of share approaches. He undertook a joint venture with a large NY investment manager and 2 years ago sold the business to State Street bank. He continues to work with them under contract. I would think that two such young entrepreneurial individuals would be prime candidates for a relationship with Bank of America. I am disappointed that you do not take this same view and in fact that no one in your compliance area bothered to ask.

Despite the above, I personally have had a 10 year relationship with Mr. Lou Schaufele and enjoy working with him and his team immensely. Michele, Shawn, Misty and Nora are truly amazing and dedicated. If not for my relationship with them and the exceptional client service I receive from their group, I would terminate the relationship with Bank of America on the spot. I, however, do care about knowing who I do business with and know that I am lucky to be able to work with them. As such, I am disclosing to you the fact that the aforementioned three accounts are owned 50/50 by myself (passport # [REDACTED], DOB: [REDACTED]) and my husband Jeff Boucher (passport # [REDACTED], DOB: [REDACTED]). Our address is as above in the Cayman Islands. We have resided there for nearly 13 years, my husband has Caymanian Status and I am a Cayman Permanent Resident.

I trust this satisfies your need, if you require any further information you are aware of how to reach me.

Regards,



Michelle L. Boucher

NOV 08 2004 15:07

NOV 08 2004 07:55 FR BANK OF AMERICA B312 974 3040 TO 917046025868 P.04

\*\* COMMUNICATIONS REPORT \*\*

AS OF NOV 05 2004 15:24 PAGE.01

BANK OF AMERICA B

TOTAL PAGES

TOTAL TIME

SEND : 0005  
RECEIVE : 0006

SEND : 00'00'41"  
RECEIVE : 00'02'45"

	DATE	TIME	TO/FROM	MODE	MIN/SEC	PGS	JOB#	STATUS
01	11/05	09:08		G3-R	00'31"	000		INC
02	11/05	11:39	912144430109	UF-S	00'14"	002		OK
03	11/05	12:42	96210909	EC-S	00'27"	003	034	OK
04	11/05	14:51	Brooktrout Channel	EC-R	00'34"	002	036	OK
05	11/05	14:55		EC-R	00'13"	002	037	OK
06	11/05	15:06		EC-R	01'27"	002	038	OK

MEADOWS, OWENS, COLLIER & ASSOCIATES, P.C.  
ATTORNEYS AT LAW  
A MEMBERSHIP LIMITED LIABILITY PARTNERSHIP (FOLLOWS PROFESSIONAL CORPORATION)  
 901 MAIN STREET, SUITE 3700  
 DALLAS, TEXAS 75202  
 (214) 744-3700  
 www.meadowsowens.com

CHARLES D. PULMAN  
 Partner

FAX (214) 747-3732  
 WATS (800) 431-0000  
 DIRECT DIAL (214) 749-3447  
 cpulman@meadowsowens.com

November 12, 2004

VIA FACSIMILE: 312-974-3040

Mr. Timothy P. Maloney  
 Bank of America  
 Mail Code: IL 1-231-03-50  
 231 South LaSalle Street  
 Chicago, IL 60697

Re: Michelle L. Boucher

Dear Mr. Maloney:

By letter dated November 5, 2004, Ms. Boucher sent you a letter containing the information that Bank of America had requested. Since Bank of America subsequently informed Ms. Boucher that the relevant accounts would be closed, request is hereby made, on behalf of Ms. Boucher, that you return to me her letter to you dated November 5, 2004, and that the Bank neither retain any copies of that information or disclose that information to any person.

If you have any questions, please contact me.

Truly yours,

*Charles D. Pulman*  
 Charles D. Pulman

CDP:ll

cc: Michelle L. Boucher  
 310649

NO. 713 P023

Permanent Subcommittee on Investigations  
EXHIBIT #22

12/18/95 12:03

Sterling Software Trades									
Date 12-Dec-95									
Loan					Hedge				
Zero Cost Collar					Collateral				
AVG Names	12-Nov-95	Loan Amount	Transaction	# of	12-Dec-95	Underlying	Mkt Val	# of	12-Dec-95
East Carroll Ltd.	\$	9,035,200.00	Buy Call (E)	900,000	31,815,980	(2,278,504)		(488,500)	(28,119,828)
Roaring Fork Ltd.	\$	6,025,400.00	Sell Put (A)	(900,000)	(31,815,980)	6,183,839			
Little Woody Ltd.	\$	6,025,400.00							
West Carroll Ltd.	\$	4,017,600.00							
Morehouse Ltd.	\$	4,017,600.00							
Ridgeland Ltd.	\$	9,035,200.00							
TOTAL:	\$	36,158,400.00						(488,500)	(28,119,828)
Loan					Collateral				
AVG Name	12-Nov-95	Loan Amount	Transaction	# of	12-Dec-95	Underlying	Mkt Val	Underlying	Puts
Maverick	\$	12,147,380.00	Buy Call (E)	300,000	10,857,000	(815,950)			
			Sell Put (A)	(300,000)	(10,857,000)	2,590,073			
			Total	300,000	10,857,000	1,774,117			
Loan					Collateral				
AVG Name	12-Nov-95	Loan Amount	Transaction	# of	12-Dec-95	Underlying	Mkt Val	Underlying	Calls
Devotion, Ltd.	\$	1,898,493.95	Sell Call (A)	(333,333)	(13,093,279)	(7,584,980)			
			Total	(333,333)	(13,093,279)	(7,584,980)			
Loan					Collateral				
AVG Name	12-Nov-95	Loan Amount	Transaction	# of	12-Dec-95	Underlying	Mkt Val	Underlying	Calls
Elegance, Ltd.	\$	783,308.04	Sell Call (A)	(166,666)	(6,246,721)	(3,782,451)			
			Total	(166,666)	(6,246,721)	(3,782,451)			

— = Redacted by the Permanent Subcommittee on Investigations

Lehman Brothers

Equity Derivatives  
212-~~0000~~

SW  
LOOKS LIKE THEY'RE  
DOING A GREAT JOB  
BUYING A BIG % OF THE  
VOLUME WITHOUT MOVING  
THE PRICE. - EW

**SSW Swap Execution Report**  
Sarnia, Greenbriar, Quayle

Date: 10/13/99  
To: Kelly Harding  
From: Michael Cohen, Lou Schindler

Ph: 011-44  
Fax: 011-44  
Redacted by the Permanent Subcommittee on Investigations

Permanent Subcommittee on Investigations  
**EXHIBIT #23**

Trade Date	Swap Shares <sup>1</sup>	Average Execution Price	Notional	Total Shares Traded	Percentage of Total Traded	Yours Weighted Price	At Execution Compared to VWAP	Uplift or Collateral Required
10/13/99	51,000	\$20.54045	\$1,088,643.85	109,800	48.37%	\$20.533	(\$0.013)	\$316,593.135
10/11/99	40,000	\$20.6078	\$824,312.40	192,100	20.82%	\$20.631	(\$0.023)	\$247,293.720
10/12/99	231,000	\$20.7243	\$4,580,070.30	333,600	62.80%	\$20.7167	\$0.008	\$1,374,021.990
10/13/99	245,000	\$20.5863	\$4,933,111.90	339,100	70.95%	\$20.5969	(\$0.010)	\$1,485,933.570

**TOTALS:** 554,000 554,000 \$1,446,138.25 994,600 35.76% \$1,433,641.54

<sup>1</sup> Swap Shares represent the number of shares (collateral) received for the hedge.

Total Shares Client is Exposed to Date: 554,000  
Total Collar Orders: 1,500,000  
Shares to be Executed: 945,400

CONFIDENTIAL  
SECID00980650  
PSID0109917

## Memo

---

Date: July 22, 1999

To: Shari Robertson

From: Lou Schaufele *LS*

---

I wanted to go over a thought that I had regarding the option exercise for some of the offshore entities and the announced share repurchase by the company. I understand that the company really doesn't want to commence with the repurchase until 4Q or later, but that opens the company up to risk if the stock were to rise over the next few months. Given that the offshore entities would like to sell stock over the next few months at current market levels and the company has a risk if the stock rises between now and the 4Q, perhaps there is a way that we could help both concerns. The company could enter into a swap with Lehman Brothers to be done over time. The offshore entity would be a seller and the buyer would be Lehman. As Lehman bought stock, they in turn would enter into a swap arrangement with the company at the current price. This would offer the protection from upward price movement. The offshore entity could sell stock without pressuring the market.

---

---

---

**From:** Keeley Hennington  
**Sent:** Wednesday, October 03, 2001 1:01 PM  
**To:** mboucher@candw.ky  
**Subject:** Urgent - Charles

This was Quayle Ltd.

---

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---

----- Forwarded by Keeley Hennington/htst on 10/03/01 02:07 PM -----

Keeley Hennington  
 10/03/01 01:59 PM

To: mboucher@candw.ky  
 cc:  
 Subject: Urgent - Charles

Hey, Charles called and wanted to sell 100,000 shares of MIKE at \$42.00 or better today and asked me to call Lehman. They were okay with my verbal and just need you to follow up and get some instruction from the trustees also. They were selling today on my authorization. I really hope that is okay.

If you get a chance to call me later on all this other MIKE shit, feel free tonight at 972-503-0565

Thanks

---

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Permanent Subcommittee on Investigations

**EXHIBIT #25**

Confidential  
 SEC\_ED00000649

PSI\_ED00000649



---

**From:** Keeley Hennington  
**Sent:** Thursday, October 04, 2001 5:05 AM  
**To:** "Michelle Boucher" <mboucher@candw.ky>  
**Subject:** Re: Fw: Quayle

yep call me when you get in. I am so sorry about calling over there, I just did not know what problems it would cause. Talk to you later

---

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---

"Michelle Boucher" <mboucher@candw.ky>  
 10/03/01 07:39 PM

To: <khennington@htst.com>  
 cci  
 Subject: Fw: Quayle

I think you know this already.

-----Original Message-----

From: Schaufele, Louis J <lschaufele@lehman.com>  
 To: 'michelle boucher' <mboucher@candw.ky>  
 Date: Wednesday, October 03, 2001 4:19 PM  
 Subject: Quayle

>We sold 82,500 Michael Stores today for Quayle.

>

>> -----

>> ----

>> -

>> -----

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PSI\_ED00000654

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SEC\_ED00000655

PSI\_ED00000655

07-25-2008 08:25pm From-

T-548 P.003/028 F-432

---

From: "Owens, Rodney J." <rowens@meadowsowens.com>  
Sent: Tuesday, February 27, 2001 9:53 AM  
To: "Hennington, Keeley" <khennington@htst.com>; "Boucher, Michelle" <mboucher@candw.ky>  
Cc: "Boehme, Cheryl" <cboehme@meadowsowens.com>  
Subject: Wyly Family Foreign Trust Planning-March 8th Outline.  
  
Attachments: Sam Wyly Family Foreign Trust Planning\_v1.DOC

Keeley &amp; Michelle-

Attached is my draft of the proposed outline for our March 8th conference. Please review and let me know your thoughts and any changes.  
Thanks! Rodney

&lt;&lt;Sam Wyly Family Foreign Trust Planning\_v1.DOC&gt;&gt;

- Sam Wyly Family Foreign Trust Planning\_v1.DOC

Sam Wyly Family  
Foreign Trust ...

07-25-2006 08:25pm From-

T-548 P.004/029 F-432

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**SAM WYLY FAMILY  
FOREIGN TRUST PLANNING  
CONFIDENTIAL CONFERENCE OUTLINE  
[March 8, 2001]**

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PSI25JUL000002

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**SAM WYLY FAMILY  
FOREIGN TRUST PLANNING  
CONFIDENTIAL CONFERENCE OUTLINE  
[March 8, 2001]**

**I. GENERAL PLANNING MATTERS.**

**A. Conference Agenda Items.**

1. Overview Of Primary Trust Terms.
2. Overview Of Primary U.S. Tax Issues For Trusts.
3. Overview Of Preliminary Tax Planning For Trusts.

**B. Family Confidentiality Issues.**

1. Legitimacy And Legalties Of All Prior, Current And Future Planning With International Trusts.
2. Tax Planning Tolerance Scale.

**REDACTED**

3. Maintaining Family Confidentiality.
4. Established Procedures To Enhance Integrity Of Planning.

**C. Brief Discussion Regarding 1996 Tax Legislation And Treasury Regulations.**

## II. OVERVIEW OF 1992 ANNUITY-TRUST ENTITIES.

### A. Summary Of 1992 Irrevocable Nongrantor Foreign Trusts.

1. Creation: Sam created the "Bulldog" Trusts on March 23, 1992.
2. Initial Trust Assets: The 1992 Trusts were initially funded with \$100 each (i.e., literally, a \$100 bill is attached to each).
3. Initial Beneficiaries:

**REDACTED**

4. Successor Beneficiaries: Sam's descendants.
5. Current Trustee: IFG International (an IOM trust company).
6. Current Trust Protectors: Shari & Michelle.
7. GSTT Matters:

**REDACTED**

8. Current Trust Assets:

**REDACTED**

### B. Trust Funding Matters.

1. Trust Acquisition Of Nonqualified Stock Options From Sam In Exchange For Deferred Private Annuity Contracts.

2. Overview Of Nonqualified Stock Options:

- (a) Contractual Right To Purchase Corporate Shares For Price Fixed At Date Option(s) Is Granted.
- (b) Assuming Value Of Company Shares Increase, A Subsequent Exercise Of The Purchase Option Permits The Owner To Acquire Shares For A Price Substantially Below The Market Value.

**REDACTED**

- (c) "Paper" Exercise Option: Instead of paying cash for the purchase of the optional shares, the owner can "turn back" to the Company so much of the optioned shares which has a value at that time equal to the purchase (or strike) price for the remaining shares.

**REDACTED**

3. Overview Of Private Annuity Transactions:

- (a) Unsecured Sales Transaction: Transfer of property by one person [the Transferor] to another party [the Transferee] in exchange for the Transferee's promise to pay the Transferor an annual annuity for the life of the Transferor.

**REDACTED**

- (b) Zero Intended Gifts:

**REDACTED**

- (c) Computation Of Annual Annuity Payments:

**REDACTED**

- (d) Termination At Death:

**REDACTED**

4. Exchange Of Sam's Stock Options For Private Annuity Contracts:

**REDACTED**

- (a) Deferred Payment Dates.  
(b) U.S. Income Tax Issues On Payments.  
5. Trust "Paper" Exercise Of Options.

**REDACTED**

6. Current Trust Financial Status.

- (a) Assets: Substantial "Liquid" Investments.  
(b) Liabilities: Private Annuity Obligations To Sam.

- C. Tax Characterization Of 1992 Trusts During Charitable Interest Term.

1. FNGT Status During Charitable Interest Term:

**REDACTED**



2. U.S. Tax Consequences:**REDACTED**3. U.S. Tax Treatment Of Trust Owned Corporations:**REDACTED**4. Characterization Of Accumulated Income:**REDACTED**D. Tax Characterization Of 1992 Trusts After Charitable Interest Term.1. Loss Of FNGT Status After Charitable Interest Term:**REDACTED**2. U.S. Tax Consequences:**REDACTED**(a) U.S. Income Taxation Of DNI Distributions.(b) U.S. Income Taxation Of "Accumulated Income" Distributions.

## (c)

**REDACTED**3. U.S. GSTT Consequences For Any Trust Distributions To "Skip Persons".

07-25-2006 08:27pm From

T-548 P.010/028 F-432

E. Summary Of 1992 Trusts.

1. During Charitable Term Of Trust:

**REDACTED**

2. After Charitable Term Of Trust:

**REDACTED**

### III. OVERVIEW OF 1994-1995 TRUST ENTITIES.

#### A. Summary Of 1994-1995 Irrevocable Foreign Grantor Trusts.

1. Creation: Keith King, as grantor, created the Bessie Trusts in 1994, and Shawn Cairns, as grantor, established the La Fourche Trust in 1995, all before the September 20, 1995 grandfathering dates of the 1995 and 1996 tax legislation.
2. Initial Trust Assets: \$25,000 each.
3. Current Beneficiaries:
  - (a) Descendants Of Sam.
  - (b) Sam's "Wife" Is Also A Bessie Trust Beneficiary.
4. Current Trustee: IMG International.
5. Trust Protectors: Shari & Michelle.
6. GSTT Matters: **REDACTED**
7. Current Trust Assets: **REDACTED**

#### B. Tax Characterization Of FGT Trusts During Grantor's Lifetime.

1. FGT Status During Grantor's Lifetime: **REDACTED**
  - (a) U.S. Taxation Of Trust Income: **REDACTED**
  - (b) Treatment Of Trust Distributions To U.S. Beneficiaries: **REDACTED**
  - (c) Brief Discussion Regarding 1996 U.S. Tax Legislation And Treasury Regulations. **REDACTED**
2. U.S. Tax Treatment Of Trust Owned Corporations During Grantor's Lifetime: **REDACTED**

3. Characterization Of Accumulated Income:**REDACTED**C. Tax Characterization Of 1994-1995 Trusts After Death Of Grantor.

1. Loss Of FGT Status.
2. U.S. Tax Consequences:

**REDACTED**3. U.S. GSTT Consequences:**REDACTED**D. Annuity-Trust Transactions.

1. Same General Structure Employed With 1992 Trusts.
2. All Are "Deferred" Private Annuity Contracts.
3. Trusts Utilized "Cashless" Exercise Of Options And Warrants.

E. Summary Of 1994-1995 Trusts.

1. During Grantor's Lifetime:

**REDACTED**

847

07-25-2006 08:28pm From-

T-548 P.013/029 F-432

**REDACTED**

2. After Grantor's Death:

**REDACTED**

07-25-2006 08:28pm From-

T-548 P.014/028 F-432

#### IV. OVERVIEW OF GENERAL TRUST PLANNING MATTERS.

##### A. Pending Administrative Planning Matters For Trusts.

1. Creation Of Separate "Sub-Trusts" For Each Child And His/Her Descendants.
2. Establishment Of Corporate Trust Protector Company.

##### B. Planning To Maximize Trust Benefits.

1. **REDACTED** U.S. Taxation Of Trust Distributions To Family Members.
2. Preferred Utilization Of Trust Resources For Acquisition Of Investments And "Use" Property:
  - (a) U.S. Residential Properties.
  - (b) U.S. Business Organizations.
3. **REDACTED** Loans To Beneficiaries.

##### C. Planning To Eliminate U.S. Income Taxation.

1. Reinvestment Of Trust Assets Through Private Placement International Variable Life Insurance Products.
2. General Overview Of U.S. Tax Principles, Applicable To Variable Life Insurance Product Investments.
3. General Planning Overview For Trusts.
4. General Planning Objectives.

##### D. International Family Trust Summary.

Respectfully Presented,

RODNEY J. OWENS  
Meadows, Owens, Collier, Reed,  
Cousins & Blau, L.L.P.

[March 8, 2001]

RJO:dcv

240589

07-25-2006 08:28pm From

T-548 P.015/028 F-432

---

**From:** "Owens, Rodney J." <rowens@meadowsowens.com>  
**Sent:** Tuesday, March 06, 2001 2:58 PM  
**To:** "Boucher, Michelle" <mboucher@candw.ky>; "Hennington, Keeley" <khennington@htst.com>  
**Cc:** "Boehme, Cheryl" <cboehme@meadowsowens.com>  
**Subject:** Wyly Family Presentation.  
**Attachments:** Wyly Family Presentation\_v1.PPT

Michelle & Keeley-

Here's the revised version. Thanks for your help! Rodney

<<Wyly Family Presentation\_v1.PPT>>

- Wyly Family Presentation\_v1.PPT



Wyly Family  
Presentation\_v1.PPT.

PSI25JUL0000013

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PS125JUL0000014

**SAM WYLY FAMILY  
FOREIGN TRUST PLANNING  
CONFIDENTIAL CONFERENCE OUTLINE  
[March 8, 2001]**

850

1-548 P.010/02 R45-1

07-25-2008 08:29PM From-



# **GENERAL PLANNING MATTERS**

## **A. CONFERENCE AGENDA ITEMS.**

1. OVERVIEW OF PRIMARY TRUST TERMS AND U.S. TAX ISSUES FOR TRUSTS AND BENEFICIARIES.
2. OVERVIEW OF PRELIMINARY TAX PLANNING FOR TRUSTS.

## **B. FAMILY CONFIDENTIALITY ISSUES.**

1. LEGITIMACY AND LEGALITIES OF ALL PRIOR, CURRENT AND FUTURE PLANNING WITH INTERNATIONAL TRUSTS.
2. MAINTAINING FAMILY CONFIDENTIALITY.

# GENERAL TRUST OVERVIEW

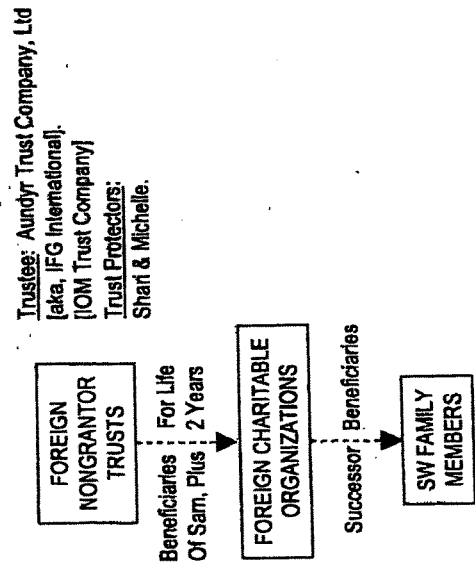
## A. TWO BROAD CATEGORIES OF FOREIGN FAMILY TRUSTS.

1. FOREIGN GRANTOR TRUSTS ["FGT"]
2. FOREIGN NONGRANTOR TRUSTS ["FNGT"]

## B. FOREIGN TRUSTEE COMPANIES.

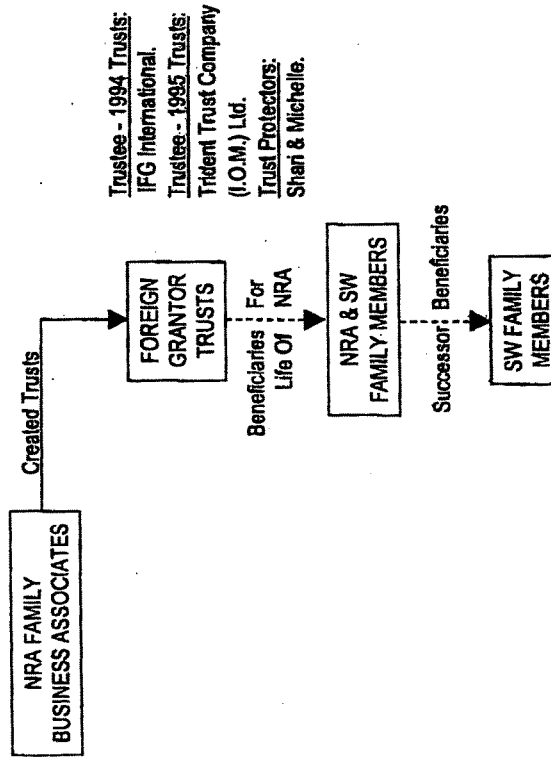
## C. FOREIGN TRUST PROTECTORS.

# OVERVIEW OF 1992 TRUSTS



PS125JUL0000017

# OVERVIEW OF 1994/1995 TRUSTS



# **OVERVIEW OF CURRENT U.S. TAX TREATMENT OF TRUSTS**

PS125JUL0000019

## **A. 1992 TRUSTS.**

**REDACTED**

855

## **B. 1994/1995 TRUSTS.**

**REDACTED**

07-25-2006 08:30pm From-

**OVERVIEW OF CURRENT U.S. TAX TREATMENT OF  
DISTRIBUTIONS TO SW FAMILY MEMBERS**

PS125JUL0000020

**A. 1992 TRUSTS.**

**REDACTED**

**B. 1994/1995 TRUSTS.**

**REDACTED**

# OVERVIEW OF U.S. TAX TREATMENT AFTER GRANTOR'S DEATH

PS125JUL0000021

REDACTED

857

1. GENERAL OVERVIEW OF "TAXABLE INCOME" OF IRREVOCABLE TRUSTS.
2. "ACCUMULATED INCOME" OF IRREVOCABLE TRUSTS.

17:46 F:\U2\U26 1 744

07-25-2008 08:31pm From-

# U.S. TAX TREATMENT OF TRUST DISTRIBUTIONS

T-548 P.024/024 T-436

PS125JUL0000022

A. DISTRIBUTIONS OF CURRENT TAXABLE INCOME.

B. DISTRIBUTIONS WHICH EXCEED CURRENT TAXABLE  
INCOME OUT OF "ACCUMULATED INCOME" ACCOUNT.

858

07-26-2006 08:31 PM From-

REDACTED



# U.S. TAX SUMMARY

859

PS125JUL0000023

REDACTED

07-25-2008 08:31 PM From-

1-048 P-UCO/USC 1-048

## **STRATEGIC PLANNING FOR TRUSTS**

PS125JUL0000024

- A. AVOIDING ACTUAL TRUST DISTRIBUTIONS.
- B. UTILIZATION OF TRUST RESOURCES  
FOR ACQUISITIONS OF "USE" PROPERTY  
BY TRUSTS.
  - RESIDENTIAL PROPERTY, ART, OTHER U.S.  
REAL ESTATE

# **STRATEGIC TRUST PLANNING**

## **(Continued)**

- C. ELIMINATION OF TRUST INCOME THROUGH  
USE OF INTERNATIONAL LIFE INSURANCE  
PRODUCTS.

**REDACTED**

# **STRATEGIC TRUST PLANNING**

**(Continued)**

D. GENERAL OVERVIEW OF U.S. INCOME TAX RULES  
FOR LIFE INSURANCE CONTRACTS.

E. GENERAL PLANNING OBSERVATIONS.

**REDACTED**

# TRUST PLANNING SUMMARY

T-548 P.028/029 F-432

07-25-2006 08:33PM From-

REDACTED

898

PS125JUL0000027

07-25-2006 08:24pm From:

T-548 P.001 F-432

**BICKEL & BREWER**

ATTORNEYS AND COUNSELORS

767 FIFTH AVENUE

50TH FLOOR

NEW YORK, NEW YORK 10155

Phone: (212) 489-1400

FAX (212) 489-2384

4800 BANK ONE CENTER  
1717 MAIN STREET  
DALLAS, TEXAS 75201  
(214) 653-4000

www.bickelbrewer.com

**TELECOPIER TRANSMITTAL COVER SHEET**

**TO:** Mark Nelson **TELECOPIER No.:** (202) 224-7042  
Raymond V. Shepard III (202) 224-7042

**FROM:** Luke McGrath

**DATE:** July 25, 2006 **TIME:** 4:36 PM

**CLIENT/MATTER NO.:** 1993-01 **OPERATOR:**

**TOTAL NUMBER OF PAGES BEING SENT, INCLUDING THIS PAGE:**

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Message:

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12/28/98 11:33:04

MEMOES-&gt;

2145084852 Right FAX

Page 082

**MEADOWS, OWENS, COLLIER, REED, COUSINS & ELAU, L.L.P.**

ATTORNEYS AT LAW  
 3700 NATIONAL BANK PLAZA  
 901 MAIN STREET  
 DALLAS, TEXAS 75202  
 (214) 744-3700

RODNEY J. OWENS, P.C.  
 Partner

FAX (214) 745-3732  
 WATS (800) 614-0023  
 rowens@meadowsoverns.com

**PERSONAL AND CONFIDENTIAL**  
**MEMORANDUM**

**VIA FACSIMILE # (01624) 630600**

TO: Mr. David A. Harris, Director, Anndyr Trust Company, Ltd.  
 FROM: Rodney J. Owens  
 DATE: December 28, 1998  
 RE: Plaquemines, Bulldog and Pitkin Trust Matters.

Dear David -

With respect to the matters addressed in your letter of November 6, 1998, we would like to respectfully respond to the pending issues with respect to the above-referenced Trusts.

1. **Plaquemines Reappointment Matters.** We concur that the Trustee should immediately proceed to take whatever steps are necessary in order to reappoint the properties of Plaquemines Trust to The Bulldog Non-Grantor Trust. We will sincerely appreciate your sending us copies of the reappointment documents when completed for our files.

2. **Remedial RAP Trust Matters.** As you are aware, it is most important for U.S. tax purposes that the integrity of The Bulldog and Pitkin Trusts be preserved from their inception. Indeed, we share your concerns with respect to a possible holding by the Court to the effect that both Trusts should be void *ab initio* based upon the violation of the RAP. We must, therefore, proceed to remediate both Trust arrangements as per your recommendations. In this regard, however, would it not be possible to request of the Court an "interpretation" to the effect that references to "all Beneficiaries" be limited to the specified individuals as opposed to an "amendment" of the Trust Agreements? I must, of course, defer to local counsel in this regard.

We are therefore in full agreement that such remedial proceedings should be pursued and completed as promptly as possible.

600 2

LSNRL BSHNI

TULLI, P.C. CONFIDENTIAL

Z50Y0888YIZ XVS Y1:00 C00Z/ZD/0Y

Permanent Subcommittee on Investigations

EXHIBIT #27a

MEOW 01

12/28/98 11:33:41

MEADONS-&gt;

2148884852 RightFax

Page 883

3. Beneficiary "Notification" Matters. After due consideration, we concur with your assessment that the consent of the beneficiaries should be unnecessary and indeed inappropriate for these purposes. Their respective beneficial interests therein and therefrom are not affected whatsoever by these proposed procedures. And while we must again defer to your judgment regarding local judicial procedures, we would, in fact, prefer that notice of such procedures be limited to only the Trust Protectors if at all possible.

In summary, therefore, we are in agreement that some type of judicial reformation should be obtained to protect the integrity of the Trusts. We look forward to successfully completing these matters as promptly as possible.

Respectfully Presented,

RODNEY J. OWENS  
Meadows, Owens, Collier, Reed,  
Cousins & Blau, L.L.P.

RJO:clb

cc: Mr. Mike French  
Mrs. Shari Robertson

200977



Owens, Rodney J.

From: David Harris [DavidH@faint.com]  
 Sent: Tuesday, December 29, 1998 3:59 AM  
 To: 'rowens@meadowsowens.com'  
 Subject: Plaquemines etc.

Thank you for your fax. I note all that you say. We will now proceed with the Plaquemines/Bulldog reappointment which has to be done before the Court applications are made.

*My Reply*

Local counsel's preference is for beneficiary consent to be obtained to the Bulldog and Pitkin applications; we have however compromised at notification to all beneficiaries and hope that the Court will allow this; if the Court insists on consent we do have the chance at that time to walk away and reconsider.

In the proposed applications we are in fact seeking an "interpretation" as referred to in your second paragraph so I think that we are at one on this point.

*David's  
Email*

Please give me a call on my direct line 011 44 1624 630670 if you wish to discuss these matters further.

Regards,

David Harris

Permanent Subcommittee on Investigations

EXHIBIT #27b

PSI-WYBR 00485<sup>[D]</sup>



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TO: **Charles Pulman** FAX NO: 001 214 747 3732  
**Meadows, Owens, Collier, Reed,**  
**Cousins & Bian LLP**  
**Dallas**

FROM: **David A Harris** FAX NO: 44 1624 663803

REF: **wldah/pulmanC1903.04fr** DATE: **19 March 2004**

PAGES:(including this one) **6**

**Bulldog**

I attach a copy of the proposed Deed of Declaration unwinding Bulldog II, together with Fullertown's letters of 3 March and 18 March. When you have had a chance to consider these perhaps we can discuss them over the telephone.

Kind regards,

**David A. Harris**  
**Director**  
**IFG International Limited**  
**Direct line: 44 1624 630670**

**Regional Office**  
**International House,**  
**Castle Hill, Victoria Road,**  
**Douglas, Isle of Man,**  
**IM2 3LS, British Isles**

**Telephone**  
**+44 (1624) 630600**

**Facsimile**  
**+44 (1624) 634469**

**E-mail: [man@ifgint.com](mailto:man@ifgint.com)**  
**Web site: [www.ifgint.com](http://www.ifgint.com)**

**Incorporated in the**  
**Isle of Man No. 7774**  
**VAT registration No.**  
**GB 000 1963 34**

Directors: D.A. Harris, K.M. Bawley, A.C.I.R., ~~Director of the Company~~, D.T. Kenny (Irish), A.C.C.A., A.C.I.A., S.J. Higgins, B.Sc.(Hons), A.C.A.  
 Licensed by the Isle of Man Financial Supervision Commission as a Company Service Provider

IFG International Limited is a  
 member of the IFG Group plc.  
 000000 12070 IVA 18:17 IRL P0, 00/00

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Permanent Subcommittee on Investigations  
**EXHIBIT #27c**

PSI-WYBR 00676

10/31/00 13:20 FAX

001/002

**The Irish Trust Company (Cayman) Ltd****FACSIMILE COVER PAGE**

TO: **Charles Wyly**  
Redacted by the Permanent  
Subcommittee on Investigations  
FAX: **Michelle Boucher**  
Redacted by the Permanent  
Subcommittee on Investigations  
DATE: **October 31st, 2000**

We are transmitting \_\_\_\_\_ page(s). Please contact the undersigned if there is a problem with the transmission.

Mr. Wyly,

Further to my conference call with Sam last week, please find attached a summary of issues relating to the selection of protectors as well as specific suggestions.

As you are aware, we have a substantive meeting set up in Cayman for November 28<sup>th</sup>, which we hope will move us well forward to establishing the Protector Company. Rodney Owens, Keeley, Shari and myself will be in attendance at the meeting with Cayman based attorneys Maples & Calder.

If you have any questions or comments, I'd be pleased to discuss them at your convenience.



Permanent Subcommittee on Investigations

**EXHIBIT #28**

CONFIDENTIAL  
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PSI00106558

10/31/00 13:21 FAX

002/002

## List of Candidates for Protector or Directors of the Protector Company:

General Guidelines:

Protectors should be individuals who:

- are familiar with the Wyly activities
- have knowledge and expertise in structuring transactions and investing in the types of assets required
- are familiar with and comfortable to interact with trustees, attorneys, brokers and other financial intermediaries to co-ordinate and ensure proper execution of trust activities
- have the time available to fill their role adequately and responsibly, and be able to act and react within required time frames
- understand the responsibilities and liabilities they undertake by serving in this role
- are likely to be involved with Wyly activities on an continuing and long term basis
- as a group are not 'controlled' by U.S. residents or citizens (i.e. No more than 50% of the directors should be U.S. residents or citizens)
- are not Wyly family members

Specific Suggestions:

- Family office employees - domestic and foreign
- Directors of Cayman Island entities (Maverick, Irish Trust, Edinburgh etc...) These individuals have experience and history with the family and their investment vehicles. I suggest, Dennis Hunter and/or Kara Rodden
- International service providers with whom we've established long term relationships - such as Dan Scott (audit partner at Ernst & Young) or Henry Smith at Maples & Calder (assuming they are not conflicted)
- Other individuals who act as professional directors such as Mike Austin (a director of Scottish Annuity and former KPMG partner) or Martin Lang (with International Management Services in Cayman, acts as director to over 120 mutual funds, including Precept International) E-4
- Attorneys that offer professional protector services - such as International Protector Company in the Cayman Islands, or Wiggin & Co's BVI protector company. (Although there are some risks involved by bringing somewhat 'unknown' parties to the group- from a transactional and confidentiality perspective which would need to be properly considered)
- Other internationally based individuals with whom family members have professional relationships
- Other internationally based individuals with whom existing protectors, trustees, and attorneys have developed relationships with on behalf of the family.
- U.S. attorneys and other trusted service providers - such as Rodney Owens (assuming they are also not conflicted)

CONFIDENTIAL  
 SEC100094692  
 PSI00106559



Michelle Boucher  
<mboucher@csandw.lk  
y>  
11/02/2000 11:35 AM

To: <Shari\_Robertson/Maverick%MAVERICKCAP@maverickcap.com>  
cc: <khennington@htst.com>  
Subject: split dollar life insurance in foreign trusts

Just a quick outline of how it works, and how Rodney thinks we can use it to effectively freeze growth in the 1992's

The 1994 trust buys a policy and the 1992 trust pays the premiums, upon death, the policy benefit is split between the 1992 trust and the 1994 trust. However, the 1992 trust only received a portion equal to the actual amount of premium originally paid - the 1994 trust gets the balance. There is no mandatory interest or return that is required to be paid to the 1992 trust on the 'use' of this cash. Apparently this true because it is a 'private' split dollar policy.

Permanent Subcommittee on Investigations

EXHIBIT #29a

[D]

PSI-WYBR 00603

copy fyi of what I sent to the trustees last night  
 — Original Message —  
**From:** Michelle Boucher  
**To:** KennethJ@ifaint.com ; davidh@ifaint.com  
**Sent:** Wednesday, November 01, 2000 5:13 PM  
**Subject:** sub-funds

— = Redacted by the Permanent  
 Subcommittee on Investigations

We are going to want to talk substantively about setting up sub-funds at the meeting next week - I'd like to hope that we can have them set up and be moving assets into them for January 1st.

At this point, we are looking at allocating approximately 20% of the major trust assets to sub funds, these are to be split equally to each child and to Cheryl (Sam's spouse), as a sub-fund created out of The Bessie Trust. This calculation results in an amount of approximately \$10Million per each sub-fund - this is the figure we are proposing to move forward with. I am aware that there is a letter of wishes on file for Bessie Trust that will need to be amended.

I have been in contact with Rodney Owens, our US tax and estate planning attorney and he is in agreement with the following proposal, which I have discussed extensively with Sam and Shari:

- Create subsidiary companies of The Bessie Trust which are nominated by way of a letter of wishes as sub-funds for the benefits of particular children and their descendants, as well as one sub-fund for his spouse.
- Sam's intent is that the sub-funds be appointed out into sub-trusts upon his death.
- the sub-funds should effectively be revocable prior to his death when they convert to sub-trusts
- Each sub-fund will hold a composite of the major investments held by the global trust system including: Cash, US Agencies, Michaels, CA, Maverick, Edinburgh, Greenmountain, Precept, Ranger and the Real Estate holding companies (Two Mile Ranch and the Cottonwoods).
- there will be specific allocations to some children, for example - Cottonwood I, which represents the ground floor of the Paragon Building, used by the Wylyworks Gallery will likely be allocated to [REDACTED] sub-fund. The Global Audio Visual investment and loan will be allocated to [REDACTED] sub-fund.
- We would like each sub-fund to own part of Two Mile Ranch, but each family group should fund construction of their specific houses, the common development costs should be split by everyone. Since we don't want ownership interests to fluctuate due to the amounts and timing of construction costs, we need to determine another mechanism for 'investing' funds in this property development. What are your thoughts on making gifts to Two Mile Ranch (IOM) (we would keep track of the accumulated gifts in sub accounts) or loans.
- Bessie Trust does not have significant liquidity or many investments other than the art and real estate vehicles, as such, we propose to lend assets from the 1992 trusts (Bulldog, Lake Providence and Delhi) to provide liquidity. The fact the Sam's spouse is not included in the class of beneficiaries of the 1992 trusts must be considered when we look at this.
- we would like to proceed on the basis that the Trustees, together with IOM/UK counsel - Michael Fullerlove if appropriate, draft the required amendments and amended letter of wishes to accomplish this. We'll have US tax counsel review.
- obviously we welcome your input and guidance as we set this up, to ensure we are conforming with Manx law as well as the trust documentation. All comments are welcome.

To start things off, here are a list of possible company names - perhaps you could check the registrar and advise which ones could be used:

Katy Limited  
 Katherine Limited  
 Abmahi Limited  
 Minerva Limited  
 Cleland Limited  
 Armstrong Limited  
 Balch Limited  
 Parker Limited  
 Irwin Limited  
 Flowers Limited

I hope this gives you a basis for our discussions next week, and we look forward to hearing your thoughts.

Permanent Subcommittee on Investigations  
 EXHIBIT #29b

MAV008239

873

Michelle

**MAV008240**

**From:** Michelle Boucher <mboucher@candw.ky>  
**Sent:** Wednesday, December 13, 2000 1:17 PM  
**To:** evan wyly  
**Cc:** khennington@htst.com  
**Subject:** subtrust  
**Attach:** att1.htm

---

I just spoke with David Harris regarding the sub-trust to split out Dortmund and Atlantis. He has draft documentation in hand, and I'll forward it to Rodney Owens for review, once I've received it.

The main points are:

- it is an irrevocable appointment out to a sub-fund- beneficiary class includes; Evan Wyly, spouse - which will be defined with an extension to Widow, and all children in issue.- all powers of the trustee, protectors etc... will be identical as those of the originating Bessie Trust, as the appointment is being made within the original settlement.

The issues which remain are:

- ability to appoint separate trustee- ability to appoint separate protector. ie. can this sub-trust really operate on a stand alone basis, or is it really an extension of the overall trust with specific appointment to a separate beneficiary class.

I feel that the desire of all parties is to have the ability to appoint separate protectors and trustees to this sub-trust and any such future appointments. (this will not be the case for the soon to be created sub-funds - the intent there is for those to roll out into 'sub-trusts' upon Sam's death.) But, this will largely be a US tax issue. David Harris will contact the UK attorneys today and get some initial advice on whether this degree of separation can occur as a matter of trust law, given the trust deeds we are working with. Once we have that law opined on, we will need to get explore the issues with Rodney.

Overall, I think this is moving ahead well. I've given the Trustees a deadline of year end on this, and I think they are working hard to try to meet it.

Michelle

- att1.htm



05/08/01 11:48 FAX

- KEELEY

001/001

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Subcommittee on Investigations

**The Irish Trust Company (Cayman) Ltd****FACSIMILE COVER PAGE**

TO: Sam Wylly From: Michelle Boucher  
FAX: 1-214-880-4072 Fax: 345-949-2519  
CC: Keeley Hennington Tel: 345-949-0658  
DATE: May 8th, 2001

We are transmitting 3 page(s). Please contact the undersigned if there is a problem with the transmission.

Sam,

I've attached a schedule of allocations for the 6 sub-funds to the offshore trusts. We are in the process of setting up the subsidiary holding companies and hope to be able to move assets starting on June 1<sup>st</sup>. The IOM Trustees have agreed a structure that we are comfortable with and Rodney Owens is approving the final documentation. The sub-funds will be Cayman LLC's as subsidiaries of the IOM Trusts. They will not be formal appointments out of the overall trust and will be revocable. They exist, as a sub-fund via an informal understanding with the trustees whereby we account for these entities separately and liaise with particular family members regarding the underlying assets.

- [REDACTED] has been specifically allocated Global Audio Visual and the Mi Casa real estate investment.
- [REDACTED] has been specifically allocated the Cottonwood Galleries investment.
- [REDACTED] have equally been allocated the Spitting Lion investment (Rosemary's home in Dallas)
- Two Mile Ranch and Cottonwood Ventures II (the 2<sup>nd</sup> floor of the Paragon building) have had 20% of the cost today allocated equally across all [REDACTED]

I then split out investments in Michaels, Ranger, Maverick Levered and Greemountain to each child, and balanced the overall allocation to \$10M each with an allocation of cash and agencies.

Note that [REDACTED] both end up with relatively low liquidity. On a fairly short term basis [REDACTED] will need liquidity to fund construction costs of their home on Two Mile Ranch. [REDACTED] also, will need near term liquidity for renovation/reconstruction of the [REDACTED] in Dallas. I suggest either reducing or eliminating allocations of particular investments to them now, or leaving the allocations as is, requiring [REDACTED] and [REDACTED] to decide what to sell when the liquidity needs arise. I don't see a problem with them selling assets back to the overall trust, or in the market when the need arises.

I have not allocated CA options, SCOT stock and warrants or the loans relating to the Malibu property as it is possible that these investments may be liquidated in the near term. Instead of allocating the GMER loans, I've doubled up on the allocation of GMTN common stock. Maverick and Precept were not allocated as they are included under the Ranger portfolio, and some Maverick Levered was allocated. Artwork can be specifically allocated at a later date

Permanent Subcommittee on Investigations  
**EXHIBIT #29d**

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PSI00078291

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+ KEELEY

001/003

when we have completed the identification process and entered into possession agreements. The remaining misc investments were not allocated due to their size.

I will be in Dallas next week for the family meeting, hopefully we can schedule some time to look at this. If we can agree a 'final' allocation we can move forward for June 1<sup>st</sup> transfers.

Kind regards,

  
Michelle Boucher

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→ KEELEY

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Subcommittee on Investigations

David Harris.

SW Foreign Trust  
Allocations to Sub-Funds  
based on 3Q1/01 financials

Bulldog + Swiss Trust.

Assets allocated	Total Value	11%	10%	9%	8%	7%	6%	5%	4%	3%	2%	1%	0%	Balance remaining
Cash & Govt Agencies	\$1,481,727	11%	10%	9%	8%	7%	6%	5%	4%	3%	2%	1%	0%	\$5,917,042
Equity Funds	\$1,481,727	11%	10%	9%	8%	7%	6%	5%	4%	3%	2%	1%	0%	\$5,917,042
Fixed Income Funds	\$1,481,727	11%	10%	9%	8%	7%	6%	5%	4%	3%	2%	1%	0%	\$5,917,042
Real Estate Funds	\$1,481,727	11%	10%	9%	8%	7%	6%	5%	4%	3%	2%	1%	0%	\$5,917,042
Commodity Funds	\$1,481,727	11%	10%	9%	8%	7%	6%	5%	4%	3%	2%	1%	0%	\$5,917,042
Other Funds	\$1,481,727	11%	10%	9%	8%	7%	6%	5%	4%	3%	2%	1%	0%	\$5,917,042
Total	\$1,481,727	11%	10%	9%	8%	7%	6%	5%	4%	3%	2%	1%	0%	\$5,917,042

- Completely revocable.
- Annual reporting to kids/on share + off-share.
- 1994 series - prop trans + act.
- 1992 trusts to 1994 trusts. / loans
- 1992 → Security Capital → 1994
- ↳ Marketable (value based) Repayable in kind
- ↳ Guarantee - repd in kind regardless of value.
- Fee → 10-15%.

CONFIDENTIAL  
SEC1000066426  
PS100078293

— = Redacted by the Permanent  
Subcommittee on Investigations

From: "Michelle Boucher" <mboucher@candw.ky>  
Sent: Thursday, May 31, 2001 4:08 PM  
To: <DavidH@ffgint.com>  
Cc: <dhennington@htst.com>; <lhaskins@lhc.com.ky>  
Subject: update on sub-fund llc creation

We have an 'approved' single member LLC document which QBT is using to do the initial incorporation work. One share of each LLC will be issued to Dennis Hunter on incorporation and transferred to Aundyr Trust Company Limited as nominee for The Bessie Trust.

David - please confirm how this share should be registered - is 'Aundyr Trust Company Limited' okay or do you typically make reference to the nominee arrangement when you set these up in ICM. I have a notation from our May 2nd discussion indicating 'Aundyr Trust Company Limited a/c BBS' - is that your preferred registration?

The initial directors for incorporation purposes will be QBT representatives, and we'll transfer this over to Kathy, Niamh and David immediately.

The six Bessie related entities are as follows, and I've indicated the various [REDACTED] names next to them.

Orange, L.L.C. - [REDACTED]  
Pops, L.L.C. - [REDACTED]  
Flo Flo, L.L.C. - [REDACTED]  
Bubba, L.L.C. - [REDACTED]  
Balch, L.L.C. - [REDACTED]  
Katy, L.L.C. - [REDACTED]

I will forward copies of all the documentation to IOM once certified and returned by the registrar of companies.

We'll need IOM signatures on a few documents over the next couple of days to effect the share transfer and change in directors.

David - did you get my tax on the initial allocations?

Also, Keeley and I are also looking at a structure that Rodney Owens outlined to us, which builds on the partnership concept you introduced in January. It is a 'frozen LLC', whereby the 1992 trust would put up 95% of the funds, for a fixed return preference interest in the LLC, and the 1994 trust would put up 5% for a 'common' interest in the LLC. In order to give us time to evaluate Rodney's proposal, we recommend entering into short term promissory note arrangements that will either convert into equity of the LLC if we go ahead with the 'frozen LLC' idea, or will be converted to long term (20 yr) fixed obligations. (At this point, Rodney is recommending a long term interest rate around 5.5% (we'll use actual AFR) and that we need to actually make annual payments, and provide for planned principal repayment commencing in 6 yrs)

The Cayman LLC's will be live effective June 1st, so we will be able to effect the transfer of various investments for that date. Documentation regarding the loans, also effective June 1st will follow next week. I just wanted to give you an update on the status and advise you of the alternatives we were looking at for proposal to the trustees.

Michelle

Permanent Subcommittee on Investigations  
**EXHIBIT #29e**

PSI-WYBR 00640

Billing Breakdown							
	1998	1999	2000	2001	2002	2003	2004
Wyll Families re: Irish Trust	\$ 18,357.50	\$ 221,705.86	\$ 101,086.47	\$ 100,677.73	\$ 22,000.21	\$ 6,693.75	
Sam Wyly re: Irish Trust			\$ 94,515.20	\$ 85,760.75	\$ 5,295.25	\$ 4,361.12	
Charles Wyly re: Irish Trust		\$ 29,127.50	\$ 29,281.30	\$ 37,746.79	\$ 10,210.00	\$ 6,756.71	\$ 3,923.75
Irish Trust						\$ 19,077.47	

Permanent Subcommittee on Investigations  
**EXHIBIT #30**

Gcib Legal

Michelle Boucher [mboucher@itc.com.ky]  
 From: Friday, April 23, 2004 9:48 AM  
 To: Schaufele, Louis J  
 Subject: RE:

Charles Pulman

-----Original Message-----  
 From: Schaufele, Louis J [mailto:louis.j.schaufele@bankofamerica.com]  
 Sent: Friday, April 23, 2004 8:12 AM  
 To: Michelle Boucher  
 Subject:

What is the atty's name at Meadows?

Lou Schaufele  
 Managing Director / Investments  
 Private Client Advisor  
 Bank of America Private Bank  
 Banc of America Investment Services, Inc.  
 214 303 2916  
 214-303-2980 fax

\*\*\*\*\*  
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 .....

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Permanent Subcommittee on Investigations  
**EXHIBIT #31**

BA 029640

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\*\*\*\*\*

JAN 17 2001 12:38 FR 210 351 2546

210 351 2546 10 02140804107

P.03/04

John J. Stephens  
Vice President-TaxesSBC Communications Inc.  
175 E. Houston Street  
Room 8-H-80  
San Antonio, Texas 78205  
Phone: 210 351-3900  
Fax: 210 351-3900  
Email: jstephe@corp.sbc.com

January 11, 2001

Mr. Sam Wyly  
300 Crescent Court, Suite 1000  
Dallas, Texas 75201-7852

Dear Mr. Wyly:

As part of SBC Communications Inc.'s ("SBC") acquisition of the stock of Sterling Commerce ("Sterling") in March, 2000, all outstanding options to purchase shares of Sterling were canceled. All option holders received cash from SBC/Sterling based on the excess of the stock purchase price over the option exercise price. A grantor trust that held Sterling options previously granted to you received cash proceeds from SBC/Sterling for the exercise of options.

Typically, the exercise of nonqualified stock options, such as those issued by Sterling, require the option holder to recognize taxable income in the year the options are exercised. The company issuing the options receives a tax deduction to the extent income is recognized by the option holder. The company has a legal obligation to report the amount of income recognized by an option holder to the Internal Revenue Service.

Because of this reporting obligation, SBC is preparing to issue a Form 1099 to you/your trust showing taxable income of \$ 46,575,000.00. If you are aware of any reason that this Form 1099 should not be issued, please contact either Larry Ruzicka at (210) 351-3904 or me at your earliest convenience.

Sincerely,

CC: Al Hoover

Permanent Subcommittee on Investigations

EXHIBIT #32

CONFIDENTIAL  
SEC100051698  
PSI00063565



JAN 17 2001 12:38 FR 218 351 2546

218 351 2546 TO 8214984414/

P. 02/04

John J. Stephens  
Vice President-TaxesSBC Communications Inc.  
175 E. Houston Street  
Room 8-H-60  
San Antonio, Texas 78205  
Phone: 210 351-5900  
Fax: 210 351-3900  
Email: jstephe@corp.sbc.com

January 11, 2001

Mr. Charles Wyly, Jr.  
300 Crescent Court, Suite 1000  
Dallas, Texas 75201-7852

Dear Mr. Wyly:

As part of SBC Communications Inc.'s ("SBC") acquisition of the stock of Sterling Commerce ("Sterling") in March, 2000, all outstanding options to purchase shares of Sterling were canceled. All option holders received cash from SBC/Sterling based on the excess of the stock purchase price over the option exercise price. A grantor trust that held Sterling options previously granted to you received cash proceeds from SBC/Sterling for the exercise of options.

Typically, the exercise of nonqualified stock options, such as those issued by Sterling, require the option holder to recognize taxable income in the year the options are exercised. The company issuing the options receives a tax deduction to the extent income is recognized by the option holder. The company has a legal obligation to report the amount of income recognized by an option holder to the Internal Revenue Service.

Because of this reporting obligation, SBC is preparing to issue a Form 1099 to you/your trust showing taxable income of \$ 27,337,500.00. If you are aware of any reason that this Form 1099 should not be issued, please contact either Larry Ruzicka at (210) 351-3904 or me at your earliest convenience.

Sincerely,

A handwritten signature, likely of John J. Stephens, written in dark ink.

CC: Al Hoover

CONFIDENTIAL  
SEC100051700  
PS100063567

JAN 17 2001 12:38 FR 210 351 2546

210 351 2546 TO 82148984107

P.04/04

John J. Stephens  
Vice President-TaxesSBC Communications Inc.  
175 E. Houston Street  
Room 8-H-60  
San Antonio, Texas 78205  
Phone: 210 351-3900  
Fax: 210 351-3900  
Email: jstephe@corp.sbc.com

January 11, 2001

Mr. Evan Wyly  
300 Crescent Court, Suite 1000  
Dallas, Texas 75201-7852

Dear Mr. Wyly:

As part of SBC Communications Inc.'s ("SBC") acquisition of the stock of Sterling Commerce ("Sterling") in March, 2000, all outstanding options to purchase shares of Sterling were canceled. All option holders received cash from SBC/Sterling based on the excess of the stock purchase price over the option exercise price. A grantor trust that held Sterling options previously granted to you received cash proceeds from SBC/Sterling for the exercise of options.

Typically, the exercise of nonqualified stock options, such as those issued by Sterling, require the option holder to recognize taxable income in the year the options are exercised. The company issuing the options receives a tax deduction to the extent income is recognized by the option holder. The company has a legal obligation to report the amount of income recognized by an option holder to the Internal Revenue Service.

Because of this reporting obligation, SBC is preparing to issue a Form 1099 to you/your trust showing taxable income of \$ 4,050,000.00. If you are aware of any reason that this Form 1099 should not be issued, please contact either Larry Ruzicka at (210) 351-3904 or me at your earliest convenience.

Sincerely,

A handwritten signature in dark ink, appearing to be "J. Stephens", written over a horizontal line.

CC: Al Hoover

\*\* TOTAL PAGE.04 \*\*

CONFIDENTIAL  
SEC100051699  
PSI00063566

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**From:** Keeley Hennington  
**Sent:** Wednesday, January 17, 2001 9:38 AM  
**To:** MBoucher@candw.ky  
**Subject:** 1099's

Al Hoover is sending over some info from SRC's tax department on '099's. They are saying there is nothing in their file to show why the offshore trusts should not be issued a 1099 and they plan to do so at 1/31 unless they receive documentation from us. The amounts are \$27.3M CJW, \$46.6M SW and \$4.1 M Evan. I don't have offshore financials for this period so I am not sure exactly which trusts we are talking about. Evan wants me to call Rodney which I will do once I receive this letter, but thought I might check to see if the issue has ever come up before?

Keeley

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Permanent Subcommittee on Investigations

EXHIBIT #33a

PSI-WYBR 00607

**Owens, Rodney J.**

**From:** khennington@htst.com  
**Sent:** Wednesday, January 17, 2001 4:16 PM  
**To:** rowens@meadowsowens.com  
**Subject:** Option info

Here is what I have been able to gather:

The option income SBC is concerned with are those that were sold in 96 in exchange for private annuities. The trusts involved are:

Charles Wyty - Tyler Trust (Elysium)  
 Sam Wyty - Bulldog Trust (Moberly)  
 Evan Wyty - Bessie Trust (Atlantis)

All three of these transactions took place as follows:  
 3/7/96 Options issued from Sterling Commerce to individual  
 3/7/96 Each individual settled the options to a IOM grantor trust  
 3/7/96 The IOM trust sold to the above subsidiaries for private annuity  
 12/31/96 Each IOM grantor trust distributed the private annuities to the individual

Michelle seems to remember that forms were filed when the private annuities were distributed in Dec 96, but she can't remember for sure.

They do not seem to be concerned with the options that were sold offshore in 11/99, only the 96 transaction.

Let me know what else you need. Thanks

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Permanent Subcommittee on Investigations

EXHIBIT #33b

PSI-WYBR 00606

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**From:** Keeley Hennington  
**Sent:** Tuesday, January 23, 2001 12:36 PM  
**To:** "Michelle Boucher" <mboucher@candw.ky>  
**Subject:** Re: 1099

I will - he said yesterday that he was close to finishing his research

---

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---

"Michelle Boucher" <mboucher@candw.ky>  
01/23/01 03:08 PM

To: <khennington@htst.com>  
cc:  
Subject: 1099

Shari suggests that we ask Rodney to word the letter to SBC in an opinion form, which I think is a good idea. Are you going to follow up with him, or do you want me to?

Permanent Subcommittee on Investigations

EXHIBIT #33c

PSI-WYBR 00609

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**From:** Keeley Herrington  
**Sent:** Wednesday, January 24, 2001 12:14 PM  
**To:** MBoucher@candw.ky

I am faxing Rodney's 1099 memo to you now. He is going to go in a format directly to SDC. I also got the Greenbriar stuff - thanks very much. Were they current on interest through 6/30 such that the \$47,890.41 should be the total balance in accrued interest at 12/31?

\_\_\_\_\_

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\_\_\_\_\_ = Redacted by the Permanent  
Subcommittee on Investigations

Permanent Subcommittee on Investigations

**EXHIBIT #33d**

**PSI-WYBR 00610**

**MEADOWS, OWENS, COLLIER, REED, COUSINS & BLAU, L.L.P.**ATTORNEYS AT LAW  
A REGISTERED LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

901 MAIN STREET, SUITE 3700

DALLAS, TEXAS 75202

(214) 744-3700

www.meadowsowens.com

RODNEY J. OWENS, P.C.  
PartnerFAX (214) 747-3732  
WATS (800) 451-0093  
rowens@meadowsowens.com

January 26, 2001

Mr. John J. Stephens  
Vice President - Taxes  
SBC Communications, Inc.  
175 East Houston Street, Room H-60  
San Antonio, TX 78205Re: Purchase of Sterling Commerce Option from Elysium Limited.

Dear Mr. Stephens:

SBC purchased stock options in Sterling Commerce from Elysium Limited as a part of SBC's acquisition of Sterling Commerce in March of 2000. You have inquired as to whether SBC must file a Form 1099 with the Internal Revenue Service regarding the sales transaction. Although we did not represent Elysium Limited with respect to such sale, we serve as U.S. counsel for Elysium Limited and have been authorized by its representatives to respond to your inquiry. Elysium Limited is a foreign corporation organized and residing in the Isle of Man. Accordingly, it is not appropriate for SBC to file a Form 1099, or any other reporting papers regarding this transaction, because Elysium Limited is a foreign corporation and the income from the purchase of the stock options is not subject to U.S. taxation.

A payment to a corporation is only reported based upon the limited situations described in the Instructions to Form 1099, none of which apply here. [See, General Instructions for Forms 1099, 1098, 5498, and W-2G at p. Gen-10, 11; Treas. Reg. § 1.6041-3(c)(1990); Treas. Reg. § 1.6041-3(q)(Jan. 1, 2001)]. In addition, of course, a Form 1099 should not be filed for this transaction because it involves a foreign payee. [See, Treas. Reg. §§ 1.6041-2(c)(1), -3, -4 (Jan. 1, 2001)].

Permanent Subcommittee on Investigations

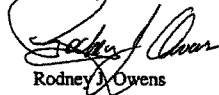
EXHIBIT #33e

PSI-WYBR 0061

SBC Communications, Inc.  
January 26, 2001  
Page 2

I understand that time is important for you. If you have any questions or concerns, please contact me and I will have one of my associates address the question or concern immediately.

Sincerely,



Rodney A. Owens

RJO:clb  
cc: Mrs. Keeley Hennington

238893

PSI-WYBR 00613



**MEADOWS, OWENS, COLLIER, REED, COUSINS & BLAU, L.L.P.**

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RODNEY J. OWENS, P.C.  
Partner

FAX (214) 747-3732  
WATS (800) 451-0093  
rowens@meadowsowens.com

January 26, 2001

Mr. John J. Stephens  
Vice President - Taxes  
SBC Communications, Inc.  
175 East Houston Street, Room H-60  
San Antonio, TX 78205

Re: Purchase of Sterling Commerce Option from Moberly Limited.

Dear Mr. Stephens:

SBC purchased stock options in Sterling Commerce from Moberly Limited as a part of SBC's acquisition of Sterling Commerce in March of 2000. You have inquired as to whether SBC must file a Form 1099 with the Internal Revenue Service regarding the sales transaction. Although we did not represent Moberly Limited with respect to such sale, we serve as U.S. counsel for Moberly Limited and have been authorized by its representatives to respond to your inquiry. Moberly Limited is a foreign corporation organized and residing in the Isle of Man. Accordingly, it is not appropriate for SBC to file a Form 1099, or any other reporting papers regarding this transaction, because Moberly Limited is a foreign corporation and the income from the purchase of the stock options is not subject to U.S. taxation.

A payment to a corporation is only reported based upon the limited situations described in the Instructions to Form 1099, none of which apply here. [See, General Instructions for Forms 1099, 1098, 5498, and W-2G at p. Gen-10, 11; Treas. Reg. § 1.6041-3(c)(1990); Treas. Reg. § 1.6041-3(q)(Jan. 1, 2001)]. In addition, of course, a Form 1099 should not be filed for this transaction because it involves a foreign payee. [See, Treas. Reg. §§ 1.6041-2(c)(1), -3, -4 (Jan. 1, 2001)].

Permanent Subcommittee on Investigations

EXHIBIT #33f

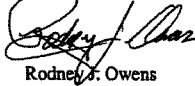
PSI-WYBR 00616

892

SBC Communications, Inc.  
January 26, 2001  
Page 2

I understand that time is important for you. If you have any questions or concerns, please contact me and I will have one of my associates address the question or concern immediately.

Sincerely,



Rodney J. Owens

RJO:clb  
cc: Mrs. Keeley Hennington

238955

PSI-WYBR 00617

**MEADOWS, OWENS, COLLIER, REED, COUSINS & BLAU, L.L.P.**

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rowens@meadowsowens.com

January 26, 2001

Mr. John J. Stephens  
Vice President - Taxes  
SBC Communications, Inc.  
175 East Houston Street, Room H-60  
San Antonio, TX 78205

Re: Purchase of Sterling Commerce Option from Atlantis Limited.

Dear Mr. Stephens:

SBC purchased stock options in Sterling Commerce from Atlantis Limited as a part of SBC's acquisition of Sterling Commerce in March of 2000. You have inquired as to whether SBC must file a Form 1099 with the Internal Revenue Service regarding the sales transaction. Although we did not represent Atlantis Limited with respect to such sale, we serve as U.S. counsel for Atlantis Limited and have been authorized by its representatives to respond to your inquiry. Atlantis Limited is a foreign corporation organized and residing in the Isle of Man. Accordingly, it is not appropriate for SBC to file a Form 1099, or any other reporting papers regarding this transaction, because Atlantis Limited is a foreign corporation and the income from the purchase of the stock options is not subject to U.S. taxation.

A payment to a corporation is only reported based upon the limited situations described in the Instructions to Form 1099, none of which apply here. [See, General Instructions for Forms 1099, 1098, 5498, and W-2G at p. Gen-10, 11; Treas. Reg. § 1.6041-3(c)(1990); Treas. Reg. § 1.6041-3(q)(Jan. 1, 2001)]. In addition, of course, a Form 1099 should not be filed for this transaction because it involves a foreign payee. [See, Treas. Reg. §§ 1.6041-2(c)(1), -3, -4 (Jan. 1, 2001)].

Permanent Subcommittee on Investigations

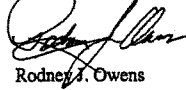
EXHIBIT #33g

PSI-WYBR 00618

SBC Communications, Inc.  
January 26, 2001  
Page 2

I understand that time is important for you. If you have any questions or concerns, please contact me and I will have one of my associates address the question or concern immediately.

Sincerely,



Rodney J. Owens

RJO:clb

cc: Mrs. Keeley Hennington

238956

PSI-WYBR 00619

To: <khennington@htst.com>  
cc:  
Subject: Re: CA Audit

----- Original Message -----  
From: <khennington@htst.com>  
To: <MBoucher@candw.ky>  
Sent: Wednesday, June 12, 2002 4:48 PM  
Subject: CA Audit

> The sales all happened at a fair market value price indicating an arms-length transaction  
>  
> If he comes back asking for the owners of the companies, I plan to give him the trustees name. Let me know what you think.  
>  
>

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>
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75,000 gm  
28.25

		seed 1/2	Cont.
SW			
org. °	1,600,000 under 9%	14.125	800,000 ✓ 450,720 ✓
	200,000	13.625	100,000 ✓ 86,340 ✓
SW	3,050,000 <del>2,300,000</del> <del>1,200,000</del>	14.125	1,525,000 ✓ 859,185 ✓
	400,000	13.625	200,000 ✓ 112,680
Chorol.	< 150,000 >		150,000 ✓ 84,510

EXHIBIT #33h

CONFIDENTIAL  
SECI00028138  
PSI00040005

PRATTER, TEDDER & GRAVES

ATTORNEYS AT LAW

CENTURY CITY OFFICE  
1801 AVENUE OF THE STARS  
SIXTEENTH FLOOR  
LOS ANGELES, CA 90067  
TELEPHONE (213) 278-2227  
FAX (213) 278-4040

ORANGE COUNTY OFFICE  
1100 TOWN & COUNTRY ROAD  
SUITE 700  
ORANGE, CA 92668  
TELEPHONE (714) 867-0170  
FAX (714) 867-1904

REPLY TO \_\_\_\_\_

April 9, 1992

Sterling Software Inc.  
8080 N. Central Expressway  
Suite 1100  
Dallas, Texas 75206

Dear Sterling Software Inc.,

Attached is the tax opinion dated February 28, 1992, in which Internal Revenue Code Section 83 is discussed with respect to the sale of Sterling Software, Inc. Warrants to a Nevada Corporation for a Private Annuity of equal value issued to Charles Wyly.

This is to inform you that you may rely on this opinion with respect to the taxation matters discussed therein.

Very truly yours,

By David Tedder  
David Tedder  
Attorney-at-Law

Permanent Subcommittee on Investigations

EXHIBIT #34a

PSI-WYBR 00244

PRATTER, TEDDER & GRAVES  
ATTORNEYS AT LAW

CENTURY CITY OFFICE  
1901 AVENUE OF THE STARS  
SIXTEENTH FLOOR  
LOS ANGELES, CA 90067  
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FAX (213) 278-4848

ORANGE COUNTY OFFICE  
1100 TOWN & COUNTRY ROAD  
SUITE 700  
ORANGE, CA 92668  
TELEPHONE (714) 687-0170  
FAX (714) 687-1084

REPLY TO \_\_\_\_\_

April 9, 1992


Michaels Stores Inc.  
8080 N. Central Expressway  
Suite 1100  
Dallas, Texas 75206

Dear Michaels Stores Inc.,

Attached is the tax opinion dated February 28, 1992, in which Internal Revenue Code Section 83 is discussed with respect to the sale of Michaels Stores, Inc. Options to a Nevada Corporation for a Private Annuity of equal value issued to Charles Wyly.

This is to inform you that you may rely on this opinion with respect to the taxation matters discussed therein.

Very truly yours,

By   
David Tedder  
Attorney-at-Law

PSI-WYBR 00245

PRATTER, TEDDER & GRAVES

ATTORNEYS AT LAW

CENTURY CITY OFFICE  
1801 AVENUE OF THE STARS  
NINETEENTH FLOOR  
LOS ANGELES, CA 90067  
TELEPHONE (213) 278-2287  
FAX (213) 278-6849

ORANGE COUNTY OFFICE  
1100 TOWN & COUNTRY ROAD  
SUITE 700  
ORANGE, CA 92668  
TELEPHONE (714) 667-0170  
FAX (714) 667-1884

REPLY TO Orange

February 28, 1992

Mr. Charles Wylly  
8080 North Central Expressway, Suite #1100  
Dallas, Texas 75206

Dear Mr. Wylly:

You have requested the opinion of PRATTER, TEDDER & GRAVES concerning the 1992 federal income tax consequences that are likely to apply to the proposed sale of "Securities" herein defined and identified in Schedule A, in exchange for a private annuity, with such sale occurring during the 1992 taxable year.

Our analysis and opinion are based upon the facts and information as set forth herein and our assumption that these facts and information present a true, accurate, and complete description of the facts that are relevant to the proposed transaction described herein and the taxation issues we are addressing herein.

We have reviewed the various legal documents and other information in connection with this proposed plan. This opinion assumes that the program will be implemented in a manner that is unmodified from the proposed program described herein.

We have only been requested to examine the material federal tax aspects that relate to the proposed program described herein. We have not been requested to examine other laws and concerns that

PSI-WYBR 00246<sup>[D]</sup>



pertain to the business transactions and/or the proposed program. Consequently, although numerous federal and state laws and Regulations apply to the business transactions, we expressly disclaim any opinion as to the effect of such laws and Regulations to the business transaction except as are otherwise expressly indicated herein.

This opinion is founded upon a prospective plan of action that has not yet been completed. Recognizing that facts and circumstances may change, and recognizing that such changes may affect the legal and tax consequences pertaining to the operations of the business transaction, we must therefore advise you that any change or deviation from the proposed plan of action described herein might produce different tax consequences than those set forth in this opinion.

Our opinion represents our conclusions derived from our legal analysis in which we applied the facts and circumstances pertaining to the Securities owned by you personally and the proposed business transaction as described herein to our interpretation of federal tax law.

Our analysis and opinion are limited to the above issue of federal taxation and do not cover or relate to any other legal or taxation issue that may pertain to such a transaction, and we expressly disclaim any opinion as to such matters.

Our opinion has no binding effect or official status of any kind, type, or character. We cannot assure you or anyone else that the opinions and conclusions contained in this opinion letter will be sustained by the Internal Revenue Service, any court of law, or anyone else.

#### **I. THE FACTUAL FOUNDATION:**

It is our understanding that you are considering the sale of Securities to an unrelated domestic corporation which will issue a private annuity in exchange for the Securities. It is our further understanding that it is the express intent of the parties to the transaction that the value of the

Securities will equal the value of the annuity and that no gift or bargain sale or discounted sale price will arise as a result of the transaction. Further, it is our understanding that the private annuity is intended to be issued in an amount that is equal to the fair market value of the Securities that are being sold in exchange for the private annuity. Neither any gift element nor any "bargain sale element" are intended to be made by you with respect to this private annuity transaction.

The private annuity payments will not be chargeable to or dependent upon the Securities sold in exchange for the annuity. The amount of the annuity payments will be based on the fair market value of the Securities.

It is our further understanding that the domestic corporation intending to purchase the Securities in exchange for the issuance of the private annuity is wholly owned by a foreign corporation which is wholly-owned by a foreign nongrantor trust. This trust has been established by you for the benefit of one (1) or more foreign beneficiaries during your lifetime. We understand that during your lifetime the trust will have no United States beneficiaries, but in the taxable years following your death the trust may have one (1) or more beneficiaries who are United States citizens and/or resident aliens.

We understand that the private annuity is intended to be unsecured. There are to be no security interests, guarantees, specific funds, or other forms of collateral or assurances that the private annuity payments will be made by the corporation other than the mere unsecured contractual promise of such corporation that it will make the annuity payments as they become due under the terms of the annuity agreement.

We further understand that the private annuity payments will not be chargeable to or dependent upon the Securities transferred by you in exchange for the annuity. Any income generated by the Securities will belong to the corporation outright, and will not be chargeable to

the annuity payments.

We understand that the amount of the annuity payments will be based on the fair market value of the Securities being exchanged for the annuity and will not be based on any income generated by the Securities that are being transferred for the annuity.

We also understand that the possession and/or enjoyment of the Securities being exchanged for the private annuity will reside exclusively with the acquiring corporation, and you will not preserve or reserve any control of any kind or character over such Securities or any income therefrom that would constitute a retained interest in the possession and/or enjoyment of the Securities being exchanged for the private annuity. It is thus expressly intended that you will irrevocably surrender the enjoyment, control, ownership, and all economic benefits attributable to the ownership of the Securities which are sold in exchange for the private annuity.

It is our understanding that the private annuity payments will contain an interest factor in the amount stipulated by the Internal Revenue Service Revenue Ruling that applies for the month in which the annuity agreement is entered into.

We understand that the corporation issuing the private annuity is not in the business of issuing annuities from time to time, and it will not issue any additional annuities during the term of its private annuity agreement with you.

We further understand that the corporation issuing the private annuity is not a life insurance company or a bank and is not authorized to conduct either the banking business or the life insurance company business and does not intend to obtain such authorization.

We have been advised that there are no outstanding encumbrances on the Securities, and consequently we do not express any opinion that relates to this issue.

You have advised us that your stock options are nontransferable and are not actively traded on an established market. The Nonstatutory Option Agreements verify and specify the nontransferability of the stock options.

You have further informed us that the stock warrants are transferable and that certain warrants are compensatory while other warrants are noncompensatory in nature. You have advised us that these warrants are not actively traded on an established market.

**II. OPINION AND ANALYSIS OF THE 1992 FEDERAL INCOME TAX CONSEQUENCES THAT ARE LIKELY TO APPLY TO THE PROPOSED SALE OF SECURITIES TO A CORPORATION IN EXCHANGE FOR A PRIVATE ANNUITY, WITH SUCH SALE OCCURRING DURING THE 1992 TAXABLE YEAR UNDER THE CIRCUMSTANCES DESCRIBED HEREIN:**

**A. PURSUANT TO THE GENERAL FEDERAL INCOME TAX TREATMENT OF PROPERTY EXCHANGED FOR A PRIVATE ANNUITY THE SALE OF PROPERTY TO THE CORPORATION IN EXCHANGE FOR THE RECEIPT OF A PRIVATE ANNUITY IS NOT A TAXABLE EVENT IN THE YEAR 1992.**

The general federal income tax treatment of property exchanged for a private annuity is explained in Research Institute of America Federal Tax Coordinator 2d at Paragraph J-4805 as follows:

"The transfer of property in exchange for a private annuity is not a taxable transaction. Thus, a taxpayer who turns his property over to a member of his family or other private individual, or to his own corporation or other corporation, which is not a life insurance company or a bank or an organization which issues annuities from time to time, in exchange for payments for life, has no immediate

*taxable gain.* (Emphasis is included in the text.) However, the payments under the arrangement are taxable when received, see Paragraph J- 4807. The actual transfer isn't taxable because the promise to make the lifetime payments is considered to have no determinable value. It makes no difference if the obligor under the private annuity arrangement (i.e., the transferee) is financially sound at the time of the transfer since that 'private' transferee is not in the business of granting annuities, his solvency is not subject to the supervision and restrictions of insurance companies and banks, and may change over the payment period. (Citations omitted.)"

In your situation, because the corporation which is issuing the annuity is not in the business of issuing annuities from time to time, and will not issue any additional annuities during the term of its private annuity agreement with you, and because the corporation is not a life insurance company or a bank and is not authorized to conduct either the banking business or the life insurance company business and does not intend to obtain such authorization, it is our opinion that it is more likely than not that the annuity will likely be taxable as a private annuity in accordance with the aforescribed federal income tax consequences, as opposed to its being taxable as a commercial annuity.

**B. THE PRIVATE ANNUITY IS NOT INTENDED TO CONTAIN A GIFT OR BARGAIN SALE ELEMENT, AND THE EXCHANGE OF SECURITIES FOR A PRIVATE ANNUITY OF EQUIVALENT ACTUARIAL VALUE IS LIKELY TO BE EXCLUDED FROM FEDERAL GIFT TAX.**

The private annuity is intended to be issued in an amount that is equal to the fair market value of the Securities that are being sold in exchange for the private annuity. Neither any gift element nor any "bargain sale element" are intended to be made by either you or the corporation with respect to this private annuity transaction.

Research Institute of America Federal Tax Coordinator 2d describes

private annuity taxation as follows at Paragraph C- 5408:

"Under the private annuity rules, there's no gift tax if the sale is made at market price (see Chapter Q), there's no estate tax on the property remaining after the taxpayer's death (see Chapter R), and the taxpayer's taxable gain on the sale is spread over the annuity payments he receives (see Chapter J)."

Warnick, 195-3rd T.M., Private Annuities, at page A-5 states:

"Under a private annuity the possibility of the Service's finding a gift in the exchange of property for an annuity of actuarially equal value is nil."

This author further explains at page A-15:

"The rules already discussed all assume that the transferor is not making a partial gift through the annuity agreement. In other words, it is assumed that the fair market value of the property and the present value of the annuity are equal...."

Research Institute of America Federal Tax Coordinator 2d at Paragraph J-4804 contains some explanatory language that is helpful and should be heeded if the avoidance of a gift element is being sought by the parties to the Annuity Agreement. The pertinent language in that Paragraph states:

"Some evidence of a gift must be present for any amount to be excluded as a gift from the cost of the private annuity.

"The fact that the value of the property exceeds the present value of the annuity is not conclusive evidence of a partial gift. (Citations omitted.) However, some evidence of a gift may appear if the taxpayer filed a gift tax return for the excess value. (Citation omitted.) ..."

It is our understanding that the private annuity payments you are to receive will contain an interest factor in the amount stipulated by the Internal Revenue Service Revenue Ruling that applies for the month in which the annuity agreement is entered into.

This is very important because the Internal Revenue Service can take the position that the present value of the annuity is less than the present value of the Securities sold in exchange for the annuity if the annuity does not contain an adequate interest rate factor to compensate for the time delay to the annuitant in receiving its consideration for the sale and exchange of the Securities. For example, see Warnick, 195-3rd T.M., Private Annuities at page A-21 discussing the United States Tax Court decision in LaFargue v. Commissioner, 73 T.C. 40 (1979), which was affirmed in part and reversed in part by the United States Court of Appeals for the 9th Circuit in 689 F.2d 845 (9th Cir. 1982), in which the Tax Court found that the annuity transaction was not taxable as a private annuity for among other reasons:

"...(T)he transaction was not based on the actuarial tables and did not include an interest factor, and there was a large gap between the present value and the fair market value of the annuity. ..."

Although the United States Court of Appeals for the 9th Circuit reversed the Tax Court's holding that the transaction did not involve a private annuity, it is important that the annuity contain an interest factor to account for the time value of money.

In your situation it is clearly the intent of the parties that the price of the annuity is to be equal to the value of the Securities being exchanged for the annuity, and no gift or other valuation benefit in excess of such value is intended to be received by either party to the agreement. It is thus our opinion that it is more likely than not that no gift tax will be imposed on your disposition of the Securities in exchange for your receiving a private annuity of equal value, provided the actuarial value of the Securities being sold in exchange for the receipt of the private annuity are of an equivalent actuarial value.

**C. THE ANNUITY PAYMENTS MUST BE UNSECURED TO AVOID YOUR BEING TAXED IMMEDIATELY IN 1992 ON THE GAIN FROM THE DISPOSITION OF THE SECURITIES BEING EXCHANGED FOR THE ANNUITY.**

The United States Tax Court has held that the private annuity income tax rules apply only to private annuities that are unsecured. If the annuity payments are secured the annuity will be taxable as if it were a commercial annuity rather than a private annuity. (See Estate of Lloyd Bell, (1973) 60 TC 469 and 212 Corp., (1978) 70 TC 788.)

For example, the Tax Court in Bell held that the property transferred in exchange for the private annuity was secured because such property was placed in escrow as security for the annuity payments, and the annuity agreement also provided for a "cognovit" judgment against the parties issuing the annuity in the event they defaulted in making their annuity payments. Consequently, the Tax Court applied the rules pertaining to commercial annuities to the transaction and held that the taxpayers had an immediately taxable gain when they exchanged their appreciated stock in exchange for the secured private annuity.

It is our understanding that the private annuity being issued to you is intended to be unsecured. There are to be no security interests, guarantees, specific funds, or other forms of collateral or assurances that the private annuity payments will be made by the corporation other than the mere unsecured contractual promise of such corporation that it will make the annuity payments as they become due under the terms of the annuity agreement.

In addition, the private annuity payments will not be chargeable to or dependent upon the Securities transferred by you in exchange for the annuity. The income generated by the property will belong to the corporation outright, and will not be chargeable to the annuity payments. The amount of the annuity payments will be based on the fair market value of the Securities being sold for the annuity and will



not be based on the income generated by the Securities being exchanged for the annuity.

Furthermore, the possession and/or enjoyment of the Securities being sold in exchange for the private annuity will reside exclusively with the corporation, and you will not preserve or reserve any control of any kind or character over such Securities and the income therefrom that would constitute a retained interest in the possession or enjoyment of the Securities being sold in exchange for the private annuity. It is thus expressly intended that you will irrevocably surrender the enjoyment, control, ownership, and all economic benefits attributable to the ownership of the Securities which are being sold in exchange for the private annuity.

Consequently, provided that the private annuity payments will be unsecured and will always remain unsecured it is our opinion that it is more likely than not that the private annuity will not be taxable as a secured annuity that is taxable as a commercial annuity.

**D. THE DISPOSITION OF COMPENSATORY NON-STATUTORY NONVESTED SECURITIES IN AN ARM'S LENGTH TRANSACTION BEFORE RIGHTS IN THE SECURITIES BECOME TRANSFERABLE TO THE OBLIGOR CORPORATION, AND THE DISPOSITION OF A COMPENSATORY NONSTATUTORY TRANSFERABLE WARRANT IN EXCHANGE FOR YOUR RECEIVING A SUBSTANTIALLY NONVESTED PRIVATE ANNUITY OF AN EQUIVALENT VALUE FROM SUCH CORPORATION IS NOT A TAXABLE EVENT IN THE YEAR 1992.**

It is our opinion that it is more likely than not that an exchange of your nontransferable stock options for a private annuity will not be subject to an immediate taxable event.

The federal income tax treatment of your nontransferable non-statutory stock options is generally covered in Internal Revenue Code

Section 83 and Regulations Section 1.83-1, 1.83-3, and 1.83-7.

Internal Revenue Code Section 83 does not initially apply to the taxation of your nonqualified stock options because your options are not actively traded on an established market and are not transferable. However, once the nontransferable stock options are exchanged for the nonvested private annuity, you will then be subject to the rules of Internal Revenue Code Sections 83(a) and 83(b). Under these rules to avoid an immediate taxable event upon the transfer of your stock options for a private annuity, the stock options must be transferred for a *substantially nonvested* private annuity.

Substantially nonvested property is property that is nontransferable and subject to a substantial risk of forfeiture. (See Regulations Section 1.83-3(b).)

The general rule regarding the transferability of property is cited in Regulation Section 1.83-3(d):

"For purposes of Section 83 and the Regulations thereunder, the rights of a person in property are transferable if such person can transfer any interest in the property to any person other than the transferor of the property, but only if the rights in such property of such transferee are not subject to a substantial risk of forfeiture. Accordingly, property is transferable if the person performing the services or receiving the property can sell, assign, or pledge (as collateral for a loan, or as security for the performance of an obligation, or any other purpose) his interest in the property to any person other than the transferor of such property and if the transferee is not required to give up the property or its value in the event the substantial risk of forfeiture materializes. On the other hand, property is not considered to be transferable merely because the person performing the services or receiving the property may designate a beneficiary to receive the property in the event of his death."

A substantial risk of forfeiture is defined in Regulation Section 1.83-

3(c) as follows:

"A substantial risk of forfeiture exists where rights in property that are transferred are conditioned, directly or indirectly, upon the future performance (or refraining from performance) of substantial services by any person, or the occurrence of a condition related to a purpose of the transfer, and the possibility of forfeiture is substantial if such condition is not satisfied."

It is our opinion that it is more likely than not that a private annuity will be treated as being substantially nonvested.

To be substantially nonvested, the private annuity must be nontransferable and subject to a substantial risk of forfeiture.

Section XVI of the Private Annuity agreement specifically states that the private annuity payments to you are nonassignable and nontransferable or capable of being pledged or otherwise encumbered by you without the prior written consent of the Obligor first being obtained. Furthermore, a private annuity is customarily nontransferable. (See Warnick, 195-3rd T.M., Private Annuities, at page number A-7. )

It is also our opinion that it is more likely than not that the private annuity is subject to a substantial risk of forfeiture as exemplified by Section 2.5(a) of the Private Annuity Agreement which states:

"The Annuity payments payable hereunder to the Annuitant are subject to a substantial risk of forfeiture to the Annuitant in that such Annuity payments shall terminate and lapse with the last payment immediately preceding the death of the Annuitant, or upon the death of the Annuitant if no payments have been made as of the death of the Annuitant; however, notwithstanding the foregoing, any annuity payments that were not made prior to the death of the Annuitant because of a breach of this Agreement by the Obligor shall be due and payable upon the death of the Annuitant together with any applicable

interest, late charges, or other payments due hereunder, and any such payments shall be made to the estate of the Annuitant . There will be no proration of payments at the time of the death of the Annuitant or at anytime thereafter."

The unpaid annuity payments upon your death are thus totally terminable, extinguishable, and forfeitable. Consequently, the private annuity is subject to a substantial risk of forfeiture.

It is therefore our opinion that your private annuity will then be treated for tax purposes as your stock options would have been treated under Internal Revenue Code Section 83. The result of this substitution is that when your private annuity substantially vests under Internal Revenue Code Section 83, it will be taxed in the Caroline D. e manner that the stock options would have been taxed under Internal Revenue Code Section 83(a) and (b)<sup>1</sup>. Therefore, it is our opinion that it is more likely than not that when the private annuity substantially vests (i.e., when payments under the terms of the annuity agreement are actually received by you) you will at that time be subject to a taxable event.

The term "nonstatutory stock options" includes warrants to purchase stock. (See Research Institute of America Federal Tax Coordinator 2d at paragraphs H-2850 and H-2853, citing Frank Shamburger (1973) 61 TC 85, affirmed (1975, CA8) 508 F2d 883.)

It is our opinion that the compensatory nonstatutory transferable warrant which is being sold in exchange for your receiving a substantially nonvested private annuity will not cause a taxable event in 1992, the year of the exchange.

Furthermore, assuming that vested nontransferable stock options and a vested transferable warrant (as defined in Income Tax Regulation Section 1.83-3(a)) are exchanged for a private annuity, it is more likely than not that such an exchange will not result in an immediate taxable event.

**E. NONCOMPENSATORY NONSTATUTORY SECURITIES TRANSFERRED TO THE OBLIGOR CORPORATION IN EXCHANGE FOR YOUR RECEIVING A SUBSTANTIALLY NONVESTED PRIVATE ANNUITY OF AN EQUIVALENT VALUE FROM SUCH CORPORATION WILL LIKELY NOT BE A TAXABLE EVENT IN THE YEAR 1992, THE YEAR OF EXCHANGE.**

Noncompensatory nonstatutory Securities are not covered by Internal Revenue Code Section 83. Internal Revenue Code Section 83 only governs property transferred in connection with the performance of services, and since these Securities are non-compensatory they will be exempt from Internal Revenue Code Section 83 rules as previously herein discussed.

It is our opinion that it is more likely than not that these non-compensatory nonstatutory Securities will be covered by the general federal income tax treatment of property exchanged for a private annuity. The Research Institute of America Federal Tax Coordinator 2d at Paragraph J-4804 explains the federal income tax treatment of property exchanged for a private annuity as follows:

"The transfer of property in exchange for a private annuity is not a taxable transaction. Thus, a taxpayer who turns his property over to a member of his family or other private individual, or to his own corporation or other corporation, which is not a life insurance company or a bank or an organization which issues annuities from time to time, in exchange for payments for life, has no immediate taxable gain. (Emphasis is included in the text) However, the payments under the arrangement are taxable when received, see Paragraph J-4806. The actual transfer isn't taxable because the promise to make the lifetime payments is considered to have no determinable value. It makes no difference if the obligor under the 'private' transferee is not in the business of granting annuities, his solvency is not subject to the supervision and restrictions of insurance

companies and banks, and may change over the payment period. (Citations omitted.)"

Because the non-compensatory nonstatutory Securities are not subject to Internal Revenue Code Section 83 coverage, it is our opinion that it is more likely than not that the non-compensatory nonstatutory Securities transferred in exchange for the private annuity will likely be taxable as property transferred in exchange for a private annuity in accordance with the aforescribed federal income tax consequences.

**F. NOTWITHSTANDING THE FOREGOING, THE DISPOSITION OF SECURITIES WITHOUT A READILY ASCERTAINABLE FAIR MARKET VALUE TO AN OBLIGOR CORPORATION IN EXCHANGE FOR YOUR RECEIVING A PRIVATE ANNUITY OF AN EQUIVALENT VALUE FROM SUCH CORPORATION IS ARGUABLY NOT GOVERNED BY INTERNAL REVENUE CODE SECTION 83, AND WOULD THUS BE EXEMPT FROM TAXATION PURSUANT TO THE FOREGOING INTERNAL REVENUE CODE SECTION 83 RULES!**

Notwithstanding the foregoing, the transfer of stock options without a readily ascertainable fair market value in exchange for a private annuity is arguably not subject to the Internal Revenue Code Section 83 rules.

If Internal Revenue Code Section 83 does not apply to the transfer of stock options in exchange for a private annuity, the stock options that are transferred in exchange for a private annuity, will likely be governed according to the aforescribed federal income rules covering private annuities, that apply to property interests that are not transferred in connection with the performance of services.

Internal Revenue Code Section 83(e) recites the situations in which Section 83 does not apply to certain property interests transferred in connection with the performance of services. That statute states:

"This Section shall not apply to-

- (1) a transaction to which Section 421 applies,
- (2) a transfer to or from a trust described in Section 401(a) or a transfer under an annuity plan which meets the requirement of Section 404(a)(2),
- (3) the transfer of an option without a readily ascertainable fair market value,
- (4) the transfer of property pursuant to the exercise of an option with a readily ascertainable fair market value at the date of grant, or
- (5) group-term life insurance to which Section 79 applies."

Under Internal Revenue Code Section 83(e)(3), a stock option without a readily ascertainable fair market value is not subject to Internal Revenue Code Section 83.

In your situation, your stock options are not actively traded on an established market and according to Regulation Section 1.83-7(b) should not have a readily ascertainable fair market value. That Regulation states:

"(1) Options have a value at the time they are granted, but that value is ordinarily not readily ascertainable unless the option is actively traded on an established market .

(2) When an option is not actively traded on an established market, it does not have a readily ascertainable fair market value unless its fair market value can otherwise be measured with reasonable accuracy. For purposes of this Section, if an option is not actively traded on an established market, the option does not have a readily ascertainable fair market value when granted unless the

taxpayer can show that all of the following conditions exist:

- (i) The option is transferable by the optionee;
- (ii) The option is exercisable immediately in full by the optionee;
- (iii) The option or the property subject to the option is not subject to any restriction or condition (other than a lien or other condition to secure the payment of the purchase price) which has a significant effect upon the fair market value on the option; and
- (iv) The fair market value of the option privilege is readily ascertainable in accordance with paragraph (b)(3) of this Section."

The Regulations further state in Section 1.83-7(b)(3) that in determining whether the value of the option privilege is readily ascertainable, and in determining the amount of such value when such value is readily ascertainable, it is necessary to consider-

- "(i) Whether the value of the property subject to the option can be ascertained;
- (ii) The probability of any ascertainable value of such property increasing or decreasing; and
- (iii) The length of the period during which the option can be exercised"

It is our understanding that none of these factors exist regarding your stock options, and therefore your stock options do not have a readily ascertainable value. Consequently, it is our opinion that it is more likely than not that if your stock options do not have a readily ascertainable value Internal Revenue Code Section 83 does not apply to the transfer of the stock options in exchange for the private annuity by virtue of Internal Revenue Code Section 83(e)(3).



However, this provision is a seemingly ignored provision of the Internal Revenue Code. There is little discussion of the applicability of this provision and the Regulations and authorities have generally overlooked this Section. Instead, the Regulations and authorities provide for an alternative method of analysis, as already herein discussed, for treating the transfer of nonvested stock options in exchange for a private annuity.

We thus caution you that while Internal Revenue Code Section 83(e) states that Internal Revenue Code Section 83 shall not apply to the transfer of stock options without a readily ascertainable fair market value, this provision should be viewed most speculatively because of the lack of substantive material supporting the application and use of this Section. Therefore, it is our opinion that while you should be aware of this provision you should be cautious in your reliance upon it. It is advisable that you proceed conservatively, and cautiously follow the Regulations governing the transfer of property in connection with the performance of services as already herein set forth.

**G. A PRIVATE ANNUITY MIGHT NOT BE CLASSIFIED AS CONSTITUTING "PROPERTY" WITHIN THE MEANING OF INCOME TAX REGULATION SECTION 1.83-3(e).**

A private annuity might not be considered to constitute "property" as that term is defined in Income Tax Regulation Section 1.83-3(e). This regulation defines property as including "real and personal property other than either money or an unfunded and unsecured promise to pay money or property in the future."

The private annuity is an unsecured promise to pay money in the future.

Section III 3.1 of the Private Annuity Agreement states in pertinent part that "(T)he parties further agree that the Obligor will not establish

any security or any *fund* or other specific chargeable source for the payment of the purchase price (being the Annuity) hereunder."

It is thus reasonable to conclude that the private annuity is *unfunded* as well as being *unsecured*, and thus does not constitute property within the meaning of Income Tax Regulation Section 1.83-3(e). However, you should be aware that we have not located any pertinent decisions, rulings, or other legal authority that substantiates this conclusion.

Professor of Law Daniel C. Knickerbocker, Jr. of Seton Hall University School of Law has written in Knickerbocker, 134-4th T.M., Annuities, at page A-34 that: "...Section 83 governs property transferred in connection with the performance of service. ... Where an employer has merely promised to pay an annuity to a beneficiary surviving one of its employees, there is no transfer of property either to the employee when the promise is made or to the beneficiary when the promise matures on the employee's death. 'Property' as used in Section 83 does not include 'an unfunded and unsecured promise to pay money in the future.' On the other hand, if the employer backs the promise with assets placed beyond the reach of the employer's creditors, the value of the promise will be includible in the employee's or beneficiary's income at the moment the benefits become transferable or nonforfeitable." (Citing Income Tax Regulation Section 1.83-3(e).)

The assets of the Obligor are not to be placed beyond the reach of its creditors, and it is thus quite likely that the private annuity that is being issued to you will not be construed to constitute "property" as that term is defined in determining the applicability of Section 83 of the Internal Revenue Code to the private annuity.

**H. THE SUBSEQUENT EXERCISE OF THE SECURITIES BY THE OBLIGOR WILL LIKELY NOT GENERATE A TAXABLE EVENT TO THE ANNUITANT.**

Income Tax Regulation Section 1.83-1(c) describes the tax

consequences with respect to the disposition of *nonvested* property in a transaction that is not engaged in at arm's-length. Under such circumstances, the subsequent exercise of the securities by the Obligor would cause the earner of the compensatory element of the property to be taxed upon the exercise of the option. A detailed example of this principle is given in the regulation to illustrate this point.

However, in our situation the disposition of the securities does not involve *nonvested* property, and the disposition is at arm's-length. Consequently, the tax consequences set forth in this regulation do not apply. Instead, the tax consequences set forth in Income Tax Regulation Section 1.83-7(a) apply to the transaction. In pertinent part such regulation states: "If the option is sold or otherwise disposed of in an arm's-length transaction, sections 83(a) and 83(b) apply to the transfer of money or other property received in the same manner as sections 83(a) and 83(b) would have applied to the transfer of property pursuant to an exercise of the option."

Thus, as under Internal Revenue Code Sections 83(a) and (b) and the regulations promulgated thereunder no taxable event will occur to the Annuitant until the annuity vests (when the annuity payments are received by the Annuitant), the exercise of the options after the transfer of the securities to the Obligor pursuant to the annuity transaction is not likely to be a taxable event to the Annuitant.

**I. THE SUBSEQUENT CONTRIBUTION OF THE ANNUITY TO A GRANTOR TRUST BY THE ANNUITANT WHO IS THE GRANTOR-SETTLOR OF SUCH TRUST WILL LIKELY NOT CAUSE THE INCOME TAX CONSEQUENCES TO VARY FROM THOSE DESCRIBED HEREIN.**

You have indicated that you are contemplating the possibility of contributing the annuity to a grantor trust in which you would be the settlor. You have inquired whether such a contribution would alter the anticipated federal income tax consequences from those described herein.

The pertinent rules relating to the taxation of a grantor trust for federal income tax purposes are set forth in Section 671 of the Internal Revenue Code. In pertinent part that statute states: Where it is specified in this subpart that the grantor ... shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor ... those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under this chapter in computing taxable income or credits against tax of an individual."

This statute is further interpreted in Income Tax Regulation Section 1.671-2(a) in pertinent part as follows: "Under section 671 a grantor or another person includes in computing his taxable income and credits those items of income, deduction, and credit against tax which are attributable to or included in any portion of a trust of which he is treated as the owner."

Thus, provided that the trust to which the annuity is contributed by the Annuitant is classified as a "grantor trust" under Internal Revenue Code Section 671, the tax consequences of such trust will be incurred by the Annuitant-Grantor.

In addition, Section 72(u) of the Internal Revenue Code indicates that an annuity contract that is not held by a natural person (such as the grantor trust) is to be taxed in accordance with the statutory scheme set forth within such statute.

However, that statute specifies that "For purposes of this paragraph, holding by a trust or other entity as an agent for a natural person shall not be taken into account."

Because the Annuitant is a "natural person" this statute does not apply and the normal annuity taxation rules would apply to the annuity.

Consequently, the tax consequences relating to the annuity will likely not vary from those incurred by the Annuitant in the event that the Annuitant were to subsequently contribute the annuity to the grantor trust.

### III. CONCLUDING COMMENTS.

The opinions contained herein have been carefully considered by us and reflect the federal income tax consequences we anticipate will apply to the areas we have discussed. Nevertheless, they are only opinions and should not be considered to be guarantees.

Our opinions have been limited to our examination of the federal income tax consequences discussed above, as indicated herein. Our opinion expressly does not cover or concern itself with other issues not addressed herein, including but not limited to the reality of values.

Our opinion is based upon the status of the federal income tax law as of the date in which this opinion is written. Should there be any change in the applicable tax laws or the facts and circumstances relating to the events described herein, the opinions expressed herein necessarily require a reevaluation in the light of such changes.

In the event there is any change in the tax principles applicable to our opinion herein, we specifically disclaim any undertaking or obligation to advise you of any such changes which may hereafter occur.

There is no assurance that the Internal Revenue Service or anyone else will not raise issues that have not been discussed herein.

Our analysis is based on the facts and/or assumptions contained in this letter. If such facts and/or assumptions are inaccurate or incomplete, our analysis and conclusions are equally inaccurate or incomplete and might vary substantially from those contained herein.

As you may be aware, the Internal Revenue Service, other government agencies, and the applicable courts possess the ability to challenge the legitimacy and reality of an entity or a transaction and can claim that an entity or a transaction are something other than what the parties genuinely believed them to be.

In light of these matters, we need to caution you that the Internal Revenue Service, other government agencies, or a court might view the transactions which are the subject of this letter in a manner differently than we would view them.

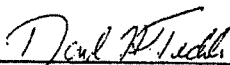
There are numerous instances when the Internal Revenue Service or the courts misread or misapply the legal principles involved in the case, leading to a tax result that may be contrary to what the taxpayer anticipated.

The Internal Revenue Service and the courts generally carefully examine the substance and business purpose and economic reality behind a transaction to determine if the transaction is genuine and is to be granted recognition for tax purposes.

However, it is our view based on the information presented to us as expressed herein that it is more likely than not that the transactions described herein will be upheld as being bona fide.

Respectfully submitted,

**PRATTER, TEDDER & GRAVES**

By   
David H. Tedder,  
Attorney at Law

<sup>1</sup>IRC Sec. 83. Property transferred in connection with performance of services.

(a) General Rule. If, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the excess of-

(1) the fair market value of such property (determined without regard to any restriction other than a restriction which by its terms will never lapse) at the first time the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over

(2) the (if any) paid for such property, shall be included in the gross income of the person who performed such services in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable. The preceding sentence shall not apply if such person sells or otherwise disposes of such property in an arm's length transaction before his rights in such property become transferable or are not subject to a substantial risk of forfeiture.

(b) Election to include in gross income in year of transfer.

(1) In general. Any person who performs services in connection with which property is transferred to any person may elect to include in his gross income, for the taxable year in which such property is transferred, the excess of-

(A) the fair market value of such property at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse), over

(B) the amount (if any) paid for such property.

If such election is made, subsection (a) shall not apply with respect to the transfer of such property, and if such property is subsequently forfeited, no deduction shall be allowed in respect of such forfeiture.

(2) Election. An election under paragraph (1) with respect to any transfer of property shall be made in such a manner as the Secretary prescribes and shall be made not later than 30 days after the date of such transfer. Such election may not be revoked except with the consent of the Secretary.

**MICHAEL GARY CHATZKY**

A LAW CORPORATION  
 762 EL PASEO DE SARATOGA  
 SAN JOSE, CALIFORNIA 95130  
 (408) 379-4611  
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April 10, 1992

Mr. David Tedder, Esq.  
 The Sands Hotel  
 3355 Las Vegas Blvd. South  
 Las Vegas, Nevada 89109

Mr. Michael French, Esq.  
 Jackson & Walker  
 901 Main Street  
 Suite 6000  
 Dallas, Texas 75202

Dear Mr. Tedder:

Enclosed please find a copy of each of the following documents.

I.) Section 83 TAX OPINIONS addressed to:

- a. EAST BATON ROUGE LIMITED
- b. RICHLAND LIMITED
- c. TENSAS LIMITED
- d. MOREHOUSE LIMITED
- e. WEST CARROLL LIMITED
- f. ROARING FORK LIMITED
- g. ROARING CREEK LIMITED

II.) Private Annuity Agreements:

- a. PRIVATE ANNUITY ISSUED FROM EAST BATON ROUGE LIMITED TO SAM WYLY
- b. PRIVATE ANNUITY ISSUED FROM TENSAS LIMITED TO SAM WYLY
- c. PRIVATE ANNUITY ISSUED FROM RICHLAND LIMITED TO SAM WYLY
- d. PRIVATE ANNUITY ISSUED FROM WEST CARROLL LIMITED TO SAM WYLY
- e. PRIVATE ANNUITY ISSUED FROM ROARING CREEK LIMITED TO CHARLES WYLY
- f. PRIVATE ANNUITY ISSUED FROM ROARING FORK LIMITED TO CHARLES WYLY
- g. PRIVATE ANNUITY ISSUED FROM MOREHOUSE LIMITED TO SAM WYLY
- h. PRIVATE ANNUITY ISSUED FROM ROARING CREEK LIMITED TO CAROLINE WYLY
- i. PRIVATE ANNUITY ISSUED FROM ROARING FORK LIMITED TO CAROLINE WYLY

III.) OTHER

- a. MODEL ASSUMPTION AGREEMENT
- b. TWO LETTERS FROM DAVID TEDDER
  - 1. TO MICHAELS STORES INC.
  - 2. TO STERLING SOFTWARE (Regarding the Section 83 Tax Opinion)



Permanent Subcommittee on Investigations

EXHIBIT #34b

PSI-WYBR 00270



## PRATTER, TEDDER &amp; GRAVES

ATTORNEYS AT LAW

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FAX (714) 867-1111

April 2, 1992

REPLY TO \_\_\_\_\_

East Baton Rouge Limited  
One East First Street  
Reno, Nevada 89501

Dear East Baton Rouge Limited:

You have requested the firm of Pratter, Tedder & Graves to provide you with our opinion with respect to the anticipated federal income tax treatment relating to the following matters:

1. Your anticipated federal income tax treatment to you, a Nevada corporation, relating to your acquisition and sale of Michaels Stores Inc., 200,000 Option (hereinafter referred to as Securities) in exchange for your issuing a private annuity to Sam Wyly.
2. Your anticipated federal income tax treatment that would likely apply if you were to subsequently relinquish your obligation to pay the private annuity referred to in Paragraph 1 above, provided that you relinquish such liability by paying the assuming party assets of a value worth the equivalent of the annuity liability.
3. The anticipated federal excise tax treatment under Internal Revenue Code sections 4371 and following regarding a possible subsequent assumption of the obligation to pay the private annuity payments by a foreign corporation not engaged in a trade or business in the United States in exchange for its receiving cash or an asset worth the equivalent value of the annuity liability.

Before we provide you with our analysis of each of these issues we wish to make you aware that this opinion letter is merely an expression of our learned views with respect to these issues. Our opinion does not command any legal authority and may be rejected by a government official, agency, private party, or anyone else. Our opinion thus has no binding authority or official status of any kind, type, or character. We cannot assure you or anyone else that the opinions and conclusions contained in this opinion letter will be sustained by the Internal Revenue Service, any court of law, or anyone else. Our opinions represent our views on these issues, but they do not represent our guarantee that they will be followed or accepted by anyone else.

In addition, our opinions do not cover or address any issues not covered herein.

PSI-WYBR 00028

Our opinions are based on the status of the federal income tax law as of the date of this written opinion. The tax laws change rapidly, and should there be any change in the applicable law or the facts and circumstances relating to the events described herein, the opinions expressed herein necessarily require a reevaluation in the light of such changes.

There is no assurance that the Internal Revenue Service or anyone else will not raise issues that have not been addressed herein.

For the sake of brevity, our discussion of the applicable legal principles will omit certain cases and other authorities that may apply to the facts and circumstances of these matters. We will take them into account in issuing this opinion letter, however.

In the event any change impacts on the tax principles or laws applicable to our opinions herein, we specifically disclaim any undertaking or obligation to advise you or anyone else of any such changes which may hereafter occur.

Our opinions are based on the correctness of the facts and circumstances set forth herein.

The Internal Revenue Service and applicable courts possess the ability to challenge the legitimacy and reality of an entity or a transaction and can claim that an entity or a transaction are something other than what the parties intended them to be. Government authorities can recharacterize a transaction into something other than what the parties intended.

There are numerous instances when the Internal Revenue Service, courts or judges are in error. They are not infallible. They can thus misread or misapply the legal principles involved in the case, leading to a tax result that may be contrary to what the taxpayer anticipated, and leading to a tax result that may be wrong.

The Internal Revenue Service, and the courts generally examine the substance and business purpose and economic reality behind a transaction in a very careful manner to determine if the transaction is genuine and is to be granted recognition in the form presented for tax purposes.

Consequently, we need to caution you that the Internal Revenue Service, or a court might view the transactions that are the subject of this opinion letter in a manner differently than either you or I would view them. Nonetheless, it is our opinion that the anticipated and intended transactions and entities described herein are more likely than not to be given recognition as being treated in the manner expressed herein. This view will be enhanced by the proper operation of the entities and transactions to comply with their intended consequences.

You should be aware that the Internal Revenue Service can charge interest on tax deficiencies and can impose numerous penalties if

it disagrees with the tax treatment of the reported transactions.

It is our view based on the information presented to us as expressed herein that it is more likely than not that the anticipated federal tax treatment relating to the matters discussed herein will be as we opine herein.

**OPINION AND ANALYSIS OF THE FEDERAL INCOME TAX CONSEQUENCES THAT ARE LIKELY TO APPLY TO THE TRANSACTIONS DESCRIBED BELOW:**

A. The anticipated tax treatment relating to your acquisition and subsequent sale of Securities in exchange for your issuing a private annuity on the life of Sam Wylly.

Because there could be an unending list of possible factual circumstances regarding your purchase, ownership, and sale of the Securities in exchange for your issuing a private annuity, this opinion will only address your anticipated income tax basis with respect to such security interests.

Upon acquiring the Securities, you need to determine your income tax basis.

The income tax basis rules pertaining to the party contractually obligated to make the private annuity payments are discussed in depth in Warnick, 195-3rd T.M. Private Annuities at pages A-28 and A-29. These rules are predicated upon the principles set forth in Revenue Ruling 55-119.

Under this ruling, your unadjusted income tax basis equals the value of the annuity as of the date in which the annuity agreement is executed, assuming that there is no gift element involved.

It is our understanding that no gift element is involved in this transaction.

In the event the Securities are sold at a gain prior to the annuitant's death, your tax basis is equal to the total of the annuity payments made to the date of sale, plus the actuarial value of the annuity payments that are yet to be made under the annuity agreement. If the Securities are sold at a loss prior to the annuitant's death the tax basis equals the total of the annuity payments actually made as of the date of sale. If the selling price is less than the basis for gain but greater than the basis for loss purposes neither a gain nor a loss is recognized on your sale of the Securities.

If the Securities are sold after the annuitant's death, your basis for determining either gain or loss is equal to the total of the annuity payments which were made under the annuity contract.

If the Securities are sold before the annuitant's death, you remain obligated to make annuity payments to the annuitant. If gain were

recognized on the sale, then, because the actuarial value of the annuity was used by you in calculating your tax basis, you had, in essence, already taken into account the future annuity payments to be made under the annuity agreement using the actuarial values based on the anticipated life expectancy. Thus, the annuity payments made after the sale do not have a tax consequence to you until the total of such annuity payments exceeds the actuarial value that was used by you to calculate your gain, whereupon each annuity payment thereafter represents a deductible loss to you. However, if the annuitant dies before the after-sale payments equal the actuarial value of the annuity, then you will have taxable income in the year of the annuitant's death equal to the difference between the actuarial annuity value which was used by you in computing your taxable gain on the sale of the Securities and the total annuity payments made after the sale. (Thus, this "windfall" to you would not go untaxed.)

If you recognized a loss on the sale of the Securities, your tax basis would be merely the total of the annuity payments made prior to such sale, and you would not have been credited for any annuity payments you made after the sale. Consequently, each post-sale annuity payment made by you after such sale would generate a tax-deductible loss to you.

If you recognized neither a gain nor a loss on the sale of the Securities, then no loss would be recognized by you on further annuity payments until the total of all annuity payments made (both before and after the sale of the Securities) equals the amount realized by you from the sale. Thereafter, each annuity payment represents a tax-deductible loss to you.

After the annuitant's death, if the total of all annuity payments is less than the amount realized by you on the sale of the Securities, the difference is taxable income to you in the year of the death of the annuitant.

To circumvent this potentially large tax consequence, you might want to have another party assume your private annuity obligation in exchange for your payment of assets having an offsetting equivalent value. This will be discussed immediately below.

It is our opinion that it is more likely than not that the federal taxation method set forth in Revenue Ruling 55-119 as described above will be applied on the transactions described in this section of our opinion.

B. Your anticipated tax treatment if you subsequently relinquish your obligation to pay the private annuity referred to in Paragraph 1 above, provided you relinquish such liability by paying the assuming party assets of a value worth the equivalent of the annuity liability being relinquished.

You have requested us to provide you with our views as to your

anticipated federal income tax consequences relating to the situation in which you would enter into a contract with a foreign corporation which does not and will not engage in business in the United States, and does not and will not have an office in the United States or an agent in the United States, under which this foreign corporation would agree to assume the obligation to pay the private annuity to the annuitant in exchange for its receiving offsetting assets equivalent to the value of the annuity liability at the time of such transaction.

Under such circumstances and provided the value of the cash and/or other assets exchanged by you equals the value of the annuity obligation at the time of such transactions, it is our opinion that it is more likely than not that there should be no federal income tax consequence to you as you have incurred no economic gain or loss.

Thereafter, the death of the annuitant would likely not produce a federal tax consequence to either yourself (as you no longer owed the annuity obligation) or to the foreign assumption corporation (as it would not be subject to U.S. taxation) under the circumstances set forth above.

However, this approach is rather novel and the tax consequences are not free from doubt. It is our opinion that it is more likely than not that the assumption of the private annuity liability prior to the annuitant's death under the circumstances described above will be nontaxable to you as noted above.

C. The foreign corporation is not an insurer or reinsurer as those terms are properly defined and applied under Internal Revenue Code Sections 4371 and 4372, and therefore will not be subject to an excise tax if thereafter it subsequently assumes the obligation to pay the private annuity in exchange for assets worth the equivalent of the value of the annuity liability.

You have indicated it is possible that, in the future, a foreign corporation which does not engage in a trade or business in the United States will enter into a contract with you under which it will assume the obligation to pay the private annuity described above in exchange for assets worth the equivalent of the then-present value of the annuity liability.

Under the circumstances herein set forth, it is our opinion that it is more likely than not that such foreign corporation will not be subject to an excise tax under Internal Revenue Code Sections 4371 and 4372 for the foregoing reasons: (1) the foreign corporation is not an "insurer" or "reinsurer"; (2) the assumption of the payments of a private annuity in exchange for assets worth the equivalent of the present value of the annuity liability is not an assumption of a risk classifiable as a risk assumed by an "insurer" or

"reinsurer" under the proper terminology and customary usage in the insurance industry; and, (3) according to the legislative of Internal Revenue Code Section 4371, the statute applies to foreign entities engaged in the trade or business of insuring against, or with respect to, hazards, risks, losses, or liabilities within the United States and the foreign corporation in this anticipated situation is not engaged in such a trade or business and does not intend to become engaged in such a trade or business. Therefore, it is our opinion that it is more likely than not that the foreign corporation is not an insurer or reinsurer, and has not assumed a risk as an insurer or reinsurer for purposes of Internal Revenue Section 4371, and therefore will not be subject to an imposition of an excise tax under Internal Revenue Section 4371.

Internal Revenue Code Section 4371, in pertinent part, imposes a tax "on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer [emphasis added]....".

Internal Revenue Code Section 4372(a) defines a a foreign insurer or reinsurer as "...an insurer or reinsurer who is a nonresident alien individual, or a foreign partnership, or a foreign corporation. The term includes a nonresident alien individual, foreign partnership, or foreign corporation which shall become bound by an obligation of the nature of an indemnity bond."

Therefore, for the excise tax to apply to an "annuity contract" or "policy of reinsurance," it must be issued by a "foreign insurer or reinsurer."

Such is not the case here.

Neither the Internal Revenue Code nor the regulations thereunder nor the judicial taxation field decisions and Internal Revenue Service rulings clearly define the terms "foreign insurer or reinsurer." Consequently, we have looked to the leading treatises on insurance law and state court decisional law for assistance in defining such terms.

We have located no definitive case, ruling, or authoritative commentary that indicates that the excise tax imposed by Internal Revenue Code Section 4371 applies in the Private annuity context.

According to Black's Law Dictionary (5th Edition), insurer is defined as "[T]he underwriter or insurance company with whom a contract of insurance is made. The one who assumes risk or underwrites a policy, or the underwriter or company with whom a contract of insurance is made."

Appleman on Insurance Law and Practice further defines the terms in Section 7001: "[A]n 'insurer' is one who assumes risk or

underwrites a policy, or the underwriter or company with whom a contract of insurance is made."

It is thus our opinion that the proper and appropriate use of the term insurer is that it applies to an underwriter or an insurance company or one who assumes risk as that term is defined.

The foreign corporation is clearly not such an insurance company or underwriter. It will not be licensed or authorized to engage in the insurance business. Therefore, it will not meet the generally accepted definition of an insurer or reinsurer unless it is an entity which assumes a risk as an insurer.

An annuity is not a contract or an instrument of insurance risk. Furthermore, the foreign corporation is not issuing the annuity as it is merely assuming the obligation to pay the annuity.

Consequently, the foreign corporation should not be classified as an insurer under the generally accepted meaning of such term.

Thus, it is more likely than not that a foreign insurer or reinsurer referred to in Internal Revenue Code Sections 4371 and 4372 pertains to an underwriter or insurance company with whom a contract of insurance is made, and the foreign corporation, under the circumstances presented to us, is not such a company or underwriter.

Thompson, on Reinsurance, 4th Edition, page 639, states: "... insurance is a protection against loss or liability....He pays the insurance company a premium. He becomes insured with this insurance company which is called the direct-writing company. A policy is delivered to him which is his contract with his insurer. The person or company insured by the direct-writing company is referred to in discussions as the insured, the assured, the original insured or the primitive assured. The original or primary insurer is obligated directly to his insured or policyholder".

An entity which assumes a risk as an insurer is an entity which makes, issues, continues, or renews instruments in the nature of an insurance policy or in the nature of an indemnity bond. For example, Couch on Insurance 2d Section 1:2 pp. 6 states: "[T]he primary requisite essential to a contract of insurance is the assumption of a risk of loss and the undertaking to indemnify the insured against such loss." Therefore, it is likely that Internal Revenue Code Sections 4371 and 4372 refer to foreign 'insurance' companies that are engaged in the business of assuming risks, issuing instruments in the nature of indemnity bonds, insurance policies and other instruments customarily issued by an insurer.

The foreign corporation is not such an entity and does not engage in foreign insurance transactions and does not issue instruments

customarily issued by an insurer. As a consequence, it is our opinion that it is more likely than not that the foreign corporation is not assuming the risk of an insurer, and thus will not be treated as an insurer when it assumes the obligation of the private annuity payments in exchange for assets worth the equivalent of the present value of the annuity liability.

Appleman on Insurance Law and Practice Section 81 states: "[A]n annuity is usually defined as being an obligation to pay a stated sum, usually monthly or annually, to a stated recipient, such payments to terminate upon the death of the designated beneficiary." Appleman citing Corporation Comm'n v. Equitable Life Insurance Society of U.S., 239 P.2d 360 (1952) in footnote 1 also states that "[I]nasmuch as annuity contracts do not insure against loss by reason of death of insured, but rather constitute investment of funds to be paid in installments during life of annuitant, annuity contracts are not a 'risk' based on contingency of loss... Since annuities are not policies or contracts of insurance (emphasis added), payments therefor are not generally regarded as premiums even though so called."

Couch on Insurance 2 in Section 1:20 in footnote 15 citing Prudential Insurance Co. v. Howell, 29 NJ 116 (1959) finds that "[T]he risks assumed under life insurance policies and under annuity contracts are diametrically opposite inasmuch as life insurance involves the traditional elements of insurance, namely, shifting of risk of loss and distribution of risk of loss over a broad base whereas annuity contracts are basically investments."

Thus, it is more likely than not that the foreign corporation does not fit within the statutory definition of an insurer because it is neither an underwriter nor an insurance company engaged in the trade or business of assuming risks. It is also our opinion that it is more likely than not that the foreign corporation is not assuming such a risk when it assumes the private annuity payment obligations in exchange for assets worth the equivalent of the value of the annuity liability, and thus is not an insurer under Internal Revenue Code Section 4371.

The legislative history of Internal Revenue Code Section 4371 is consistent with this understanding.

The terms insurer and reinsurer referred to in the Committee Reports for Internal Revenue Code Section 4371 substantiate that our above analysis is consistent with the intended applicable meanings of such terms under Internal Revenue Section 4371.

The Committee Reports on Public Law 101-239 and Public Law 100-203 which amended Internal Revenue Code Sections 4371 and 4372 refer to the term 'risk' in the context of foreign insurance companies effectively connected with the conduct of an insurance business in



the United States or in the context of foreign insurance companies issuing policies or instruments in the nature of an indemnity bond.

The Committee Reports do not include other applications of the term insurer other than those applications in the insurance company context. There are several points in the conference agreement in which the Committee Report evidences their concerns regarding the application of the use of the forthcoming Internal Revenue Code Section. The conference agreement in the Conference Committee Report for the Committee Report on Public Law 100-203, states that the agreement shall "provide regulatory authority to address the treatment of foreign insurance company investments in U.S. subsidiaries...Under the conference agreement, foreign source income that is attributable to a U.S. trade or business of a foreign property and casualty insurance company is treated as effectively connected with that trade or business."

The conference agreement indicates the intent and purpose behind Internal Revenue Code Section 4371 was to apply an excise tax to foreign insurance companies engaged in a U.S. trade or business. "Several factors are cited by the Treasury Department in support of this view. First, the provision applies to life insurance companies and property and casualty insurance companies in a manner substantially similar to present law rules covering only life insurance companies...Second, the provision attributes to a foreign insurance company an amount of assets determined by reference to the assets of comparable domestic insurance companies, thus reasonably measuring the amount of assets that the U.S. trade or business of a foreign insurance company would be expected to have were it a separate company dealing independently with non-U.S. offices of the foreign insurance company...The conferees understand that the provision governing foreign insurance companies solves a statutory problem in the context of the broader issue: measuring the U.S. taxable income of a foreign corporation that is effectively connected with its U.S. trade or business."

Under the facts presented to us, the foreign corporation will not be engaging in business as a foreign insurance company and therefore will not be subject to the excise tax under Internal Revenue Code Sections 4371 and 4372. The foreign corporation is neither assuming a risk of loss as an insurer nor is it in the business of making, issuing, renewing, or continuing insurance policies or underwriting a policy with whom a contract of insurance is made as a reinsurer. Therefore, it is more likely than not that the foreign corporation does not meet the statutory definition of insurer and will thus not be subject to the excise tax under Internal Revenue Code Section 4371.

The involvement of the foreign corporation will be limited to its assumption of the private annuity agreement in exchange for its

receiving assets worth the equivalent of the value of the annuity liability. The private annuity agreement will be issued by you, and you are not an insurer engaged in the business of customarily issuing insurance policies or annuities, and you are contractually barred from issuing additional annuities under Section XXIII of the Private Annuity Agreement.

Thus, under the foregoing analysis, the foreign corporation first, is not an insurer as that term has been properly defined and applied according to the statute's legislative history, and second, is not assuming a 'risk' as an insurer as that term is properly interpreted by authorities in the insurance field.

Under Internal Revenue Code Section 4372(a), a foreign insurer is also defined as a nonresident alien individual, a foreign partnership, or foreign corporation which shall become bound by an obligation of the nature of an indemnity bond.

The foreign corporation will not become contractually bound by an obligation in the nature of an indemnity bond.

Appleman on Insurance and Practice Section 7001 states: "[I]ndemnity has been considered an essential element of a contract of insurance, so that a contract which does not possess this element has been held not one of insurance." Appleman further states in Section 7003 that "[A] contract which requires an indemnitor to indemnify the indemnitee for losses with which the indemnitor had no connection and over which it had no control would be a 'contract of insurance'".

The foreign corporation will not be an indemnitor indemnifying you for losses with which it has no connection and over which it has no control. It is our understanding that the foreign corporation is merely assuming an obligation and will not secure you against loss or damage and will not restore to you, in whole or in part, by payment or replacement for any losses incurred.

Thus the foreign corporation will not be indemnifying you.

It is also our understanding that the foreign corporation will not be responsible for any reimbursement to you or will it be a party to the contract between you and the annuitant. Therefore, pursuant to the contract between you and the foreign corporation, the latter will be assuming the obligation of the private annuity payments in exchange for assets worth the equivalent of the annuity liability, and will not be issuing assuming, continuing, or renewing an obligation in the nature of an indemnity bond.

Our examination of case law has disclosed a pair of cases which, when read together, clarify the judicial interpretation of the term

"insurance."

These cases have led us to conclude that it would be unlikely that a court would find that the issuance of a private annuity by a corporation that it is not engaged in the issuance of other annuities or insurance policies (and, thus does not actuarially allocate the risk relating to the private annuity agreement to other annuity or insurance contracts) is equivalent to the conduct of business as an "insurer," and that it would be equally unlikely that a court would find that the assumption of the private annuity agreement by a foreign corporation that does not issue other annuities or insurance policies is to be deemed a "reinsurer," as such terms should reasonably be construed under Internal Revenue Code Section 4372(a).

The first case is the case of Professional Lens Plan, Inc. v. Dept. of Insurance, 387 So. 2d 548 (1st DCA 1980). In this case, the Florida Department of Insurance had issued a declaratory statement that a plan whereby optometrists agreed to furnish replacement lenses to their patients for an annual fee plus a fixed sum representing the costs of the lenses, was actually an insurance program.

The District Court of Appeal reversed the Florida Department of Insurance on the basis that the program did not involve any assumption of risk, distribution of loss, or payment of premium for assumption of risk. (387 So.2d 548, 550.)

Consequently, because in that case the District Court of Appeal found that the optometrists' plan "...did not involve any assumption of risk, distribution of loss or payment of premium for assumption of risk...", the plan was not subject to the Florida Insurance Statutes, (387 So.2d 548, 550.)

The District Court of Appeal thus held that Professional Lens Plan, Inc. was not providing insurance and was not subject to the Florida Statutes regulation insurance.

In its decision, the court in Professional Lens Plan, Inc. v. Dept. of Insurance cited the case of Guaranteed Warranty Corp., Inc. v. ex rel. Humphrey, 23 Ariz. App. 827, 583 P.2d 87 (1975). The Florida court explained that this Arizona case expanded upon the Florida statutory definition of the term "insurance" by indicating that normally there are five (5) elements that are present in an insurance contract.

These five (5) elements are:

- (1) no insurable interest;
- (2) a risk of loss;

- (3) an assumption of the risk by the insurer;
- (4) a general scheme to distribute the loss among the larger group of persons bearing similar risks; and
- (5) the payment of a premium for the assumption of the risk.

The court in Professional Lens Plan, Inc. v. Dept. of Insurance stated that a patient may obviously have an "insurable interest" in his or her contact lenses, and there may be a "risk of loss" of such contact lenses; however, the remaining three (3) elements of an insurance contract were not present in that case, according to the court.

The court found that there was no contractual obligation or duty between Professional Lens Plan, Inc. and the patients. The court then stated: "This determination alone would, in our opinion, dispose of the contention that Professional is engaging in a business of 'insurance.'" (387 So.2d 548, 550)

The court held in Professional Lens Plan, Inc. v. Dept. of Insurance, 387 So. 2d 548 (1st DCA 1980) that the contract between the optometrist and the patient was not an indemnification contract, but rather was a contract that provided for the purchase of additional or replacement contact lenses.

In our situation neither you nor the foreign corporation are or will be engaged in the insurance business, and neither you nor the foreign corporation will issue or assume additional annuity contracts beyond the one which is the subject of this opinion letter.

Consequently, there is an absence of a "general scheme to distribute the loss among the larger group of persons bearing similar risks."

In our situation there is likewise the absence of "the payment of a premium for the assumption of risk."

Therefore, in our situation the presence of all of the "five (5) key elements that are present in an insurance contract" is lacking, and neither you (the issuer of the private annuity) nor the foreign corporation (the party that will possibly contractually assume the private annuity liability from you) will be engaged in issuing an insurance contract as that term is defined in the common law.

As the court in Professional Lens Plan, Inc. v. Dept. of Insurance, 387 So. 2d 548 (1st DCA 1980) held that the contract between the patient and the optometrist was not an indemnification of contact lenses agreement, but was merely a contract providing for the purchase of additional or replacement contact lenses, so would it

be likely for a court in our situation to find that the contract between you and the annuitant was not an indemnification agreement--it was a private annuity agreement, and it would be equally likely in our opinion that a court will find that the contract between you and the foreign corporation is not an insurance agreement, or a reinsurance agreement, or an indemnification agreement--it will be an assumption of private annuity liability agreement without a premium feature being present.

Therefore, it is our opinion that it is more likely than not that the foreign corporation will not be classified as an insurer for federal excise tax purposes.

It is also our opinion that the foreign corporation is not a foreign reinsurer as that term is properly defined and applied under Internal Revenue Code Sections 4371 and 4372(a), and therefore will not be subject to an excise tax as a foreign reinsurer under the aforementioned Internal Revenue Code sections.

Much confusion exists regarding the definition of the term reinsurance. The term has been used erroneously and applied indiscriminately in various situations.

According to Appleman on Insurance Law and Practice, Section 7681: "Reinsurance, to an insurance lawyer, means one thing only - the ceding by one insurance company to another of all or a portion of its risks for a stipulated portion of the premium, in which the liability of the reinsurer is solely to the reinsured, and handles all matters prior to and subsequent to loss. The true reinsurer is merely an insurance company or underwriter which deals with other insurance companies as its policyholders..... "

Additionally, Couch on Insurance 2d Section 80:1 states that the reason "[M]uch confusion exists in the law as to the definition of reinsurance [is] because of the failure to distinguish three situations: (1) succession; (2) novation; and (3) additional security for the additional undertaking... The mere fact that there has been a transfer of assets to a successor corporation does not establish that there has been a reinsurance contract or an assumption of liability to the original insureds. "

For example, it is our understanding that the foreign corporation will assume the obligation of payment of only one (1) private annuity transaction in exchange for receiving assets of an equivalent value and is not receiving an additional premium for such transaction. It is also our understanding that there will not be any sharing of risk between you and the foreign corporation as a reinsurer.

The foreign corporation is neither issuing the private annuity nor reinsuring the private annuity on your behalf and therefore is not

engaging in transactions as an insurer or reinsurer.

According to Kenneth Thompson, Reinsurance 4th Edition, pp 6 a reinsurance transaction is defined as a "...relationship established between two parties, which is based primarily on contract or understanding whereby one party, called the reinsurer, in consideration of a premium paid the reinsurer, agrees to indemnify under certain terms and conditions, another party, the reassured, against a risk previously assumed by the latter, the direct writer, in its primary insurance covering the original assured." You are issuing the private annuity in exchange for the equivalent of the present value of the annuity liability, and will not receive a premium in consideration for assuming a 'risk' as that term has already been properly defined. The foreign corporation is likewise not receiving a premium in consideration for it assuming the obligation to make the annuity payments. Further, no primary insurance exists in your situation.

Thus, the foreign corporation is neither an insurer nor a reinsurer as that term is properly used and referred to in the legislative history for Internal Revenue Code Sections 4371 and 4372.

It is thus our opinion that it is more likely than not that the anticipated transaction between the foreign corporation and you is not a reinsurance transaction as that term has been defined.

It is our understanding that the foreign corporation will not assume your financial responsibilities to the Annuitant for your past conduct. It is our further understanding that the foreign corporation's agreement to assume your obligation to pay private annuity in exchange for assets worth the equivalent of the present value of the annuity liability will not be in the nature of a reserve for the annuity, or a premium in the nature of a reinsurance transaction. It is also our understanding that the foreign corporation will not indemnify you for any claims against you and will not assume a risk if you should become insolvent.

While we believe that it is more likely than not that the foreign corporation will not be subject to a one (1) percent excise tax under Internal Revenue Code Section 4371, we wish to make you aware of Revenue Ruling 80-95 in which a foreign insurer was subject to the excise tax under Internal Revenue Code Section 4371 under an arrangement between the foreign corporation and a U.S. corporation that was characterized as being similar to one of reinsurance.

The facts of this Revenue Ruling are as follows: A domestic corporation which maintained disability plans for its U.S. citizens or resident employees and former employees entered into a contract with a foreign insurer which was neither doing business nor authorized to do business in the U.S. In return for an

actuarially computed annual payment, the insurer, which was not a party to the plans, indemnified the corporation for all required payment plans. The insurer incurred no liability to the employees and was neither responsible for plan performance failures nor for the application or disposition of money paid to the corporation under the contract. The insurer had the right to audit claims against the plans and to protest what it felt were improper payments. Under these facts, the foreign insurance company was determined by the Internal Revenue Service to be subject to the excise tax imposed on foreign insurance engaged on the reinsurance of United States risks.

Under the facts presented in Revenue Ruling 80-95, the foreign corporation was obliged to indemnify the domestic corporation for losses sustained by the domestic corporation under the disability plans; thus the risk assumed by the foreign corporation under the contract was the same as the risk borne by domestic corporation under the disability plans. The fact that the domestic corporation had passed its risk to the foreign corporation did not change the nature of the risk. The arrangement was similar to one of reinsurance in which the primary insurer transferred some or all of the risk it had assumed to a second insurance company.

It is our opinion that the facts in your situation are substantially different from the facts described in Revenue Ruling 80-95, and your transaction would thus not be recharacterized as reinsurance. In your situation, it is our understanding that there will be no sharing of risk, no payment of a premium in consideration for the assumption of the obligation for the payments of an annuity, and no element of control retained by the you with respect to premium payments, auditing claims, or indemnification guarantees. Thus, the proposed factual situation materially differs in your situation from the facts and circumstances set forth in Revenue ruling 80-95.

It is our understanding that the contract between the you and the foreign corporation is a transaction at arm's length under which the foreign corporation will agree to assume the obligation to pay the private annuity in exchange for the receipt of offsetting assets worth the equivalent of the present value of the annuity liability.

As a transaction at arm's length in which a private annuity is exchanged for assets of an equivalent value of the annuity's estimated liability is not of the type of anticipated obligation of the nature of an indemnity bond or the type of transaction carried on by an insurer or reinsurer as contemplated under Internal Revenue Section 4371 and 4372. It is our opinion that it is more likely than not that if the foreign corporation is involved in an arm's length transaction with you to pay a private annuity in exchange for the receipt of assets of equivalent value to the

annuity liability, and the foreign corporation is not engaging in ~~insuring or reinsuring property~~, and is not bound by any obligation to you in the nature of an indemnity bond then there will not be an excise imposed on such a transaction.


\* \* \* \* \*

**CONCLUDING REMARKS**

The accuracy of the opinions expressed herein are dependent on the actual facts and circumstances and the application of the relevant legal principles thereto. We are aware that a portion of our opinions expressed herein are predicated upon future activities and transactions. We recommend that you carefully review the applicable law to such transactions prior to their implementation.

Respectfully Submitted,

**Pratter, Tedder & Graves**

By   
David Tedder,  
Attorney-at-Law



2148918245.

10TH FLOOR

F-344 T-192 P-001/002 FEB 03 '93 12:53

February 3, 1993

Memo to: David Tedder, Mike Chatzky, Bob Bere.

CC: Mike French

From: Shari Robertson

Re: Tax Compliance

I would like to hear from one you this week or early next week regarding the following tax compliance issues.

Lorne House needs advice on the tax compliance issues that must be met. Will you please confirm that the following forms should be filed and advise us of any other forms that must be filed. Additionally, could you please recommend a CPA to do the tax compliance work.

## Entities:

Domestic Corporation

West Carroll Limited

East Baton Rouge Limited

East Carroll Limited

Maroon Limited

Morehouse Limited

Tensas Limited

Little Woody Limited

Richland Limited

Roaring Fork Limited

Roaring Creek Limited

Owner, Foreign Corporation

West Carroll Limited (IOM)

East Baton Rouge Limited (IOM)

East Carroll Limited (IOM)

Rugosa Limited (IOM)

Morehouse Limited (IOM)

Tensas Limited (IOM)

Little Woody Limited (IOM)

Richland Limited (IOM)

Roaring Fork Limited (IOM)

Roaring Creek Limited (IOM)

Form 5471 must be filed by each Foreign Corporation reporting activities with related parties.

Form 1120 would be filed by each domestic corporation. Since the balance sheet starts at 0, is capitalized with \$10, purchases options and acquires annuity liability, sells options with annuity liability to foreign systems, the balance sheet comes back to Cash \$10, Capital \$10. Is a return necessary? We would also like your thoughts on when to liquidate these corporations.

Permanent Subcommittee on Investigations

EXHIBIT #34c

PSI-WYBR 00283

Does Lorne House have any requirement similar to Form 5471 to report Grantor and Non-Grantor Trusts settled by US citizens? Or is this reporting solely done by the settlor on Form 3520 initially and thereafter annually on Form 3520-A. Do we file 3520-A on both grantor and non-grantor trusts?

One of the Grantor Trusts has an interest in a US partnership. Is there any form similar to Form 5471 that must be filed? The Grantor trust will receive a K-1 from the U.S. partnership which is includable in Sam's return. Is this K-1 information filed on any return by the Grantor Trust? Does the Grantor Trust need a US federal ID #?

**CHATZKY AND ASSOCIATES**

A LAW CORPORATION

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February 22, 1996

The Tallulah International Trust  
c/o Lorne House Trust Limited, Trustee  
Castletown, Isle of Man  
British Isles

Dear The Tallulah International Trust:

You have requested the law firm of Chatzky and Associates, A Law Corporation to review and comment on the proposed sale of compensatory "Nonqualified Options" herein defined and identified in Schedule A, in exchange for a private annuity, with such sale to occur during the 1996 taxable year for United States income tax purposes and United States income withholding tax purposes.

Before we provide you with our analysis of these issues we wish to make you aware that this memorandum is merely an expression of our learned views with respect to these issues. Our opinion does not command any legal authority and may be rejected by a government official, agency, private party, or anyone else. Thus, this memorandum has no binding authority or official status of any kind, type, or character. We cannot assure you or anyone else that the opinions and conclusions contained in this opinion letter will be sustained by the Internal Revenue Service, any court of law, or anyone else. Our opinions represent our views on these issues, but they do not represent our guarantee that they will be followed or accepted by anyone else, and we expressly disclaim any responsibility or liability in the event our views are not followed or accepted.

In addition, this memorandum does not cover or address any issues not expressly covered herein. This memorandum is strictly limited to our interpretation of the United States federal income tax consequences that are likely to arise as a result of the proposed transaction described hereinbelow.

Permanent Subcommittee on Investigations  
**EXHIBIT #34d**

CONFIDENTIAL  
PSI00131205

This memorandum is based on the status of the pertinent United States tax laws as of the date in which this memorandum is written. The tax law changes very rapidly, and should there be any change in the applicable law or the facts and circumstances relating to the events described herein, the opinions expressed herein would necessarily require a reevaluation in the light of such changes. Additionally, pending legislation presently exists that if enacted might impact the proposed transaction and the tax consequences pertaining thereto.

There is no assurance that the Internal Revenue Service or anyone else will not raise issues that have not been addressed herein.

For the sake of brevity, our discussion of the applicable legal principles will omit certain cases and other authorities that may apply to the facts and circumstances of these matters. We will take them into account in issuing this opinion, however.

In the event there is any change in the tax principles or laws applicable to our opinions herein, we specifically disclaim any undertaking or obligation to advise you or anyone else of any such changes that may hereafter occur.

Our opinions are based on the correctness of the facts and circumstances set forth herein, and our understanding that the factual scenario set forth hereinbelow is complete, accurate, true, and correct.

The Internal Revenue Service, other government agencies, and courts each possess the ability to challenge the legitimacy and reality of an entity or a transaction and can claim that an entity or a transaction are something other than what the parties intended them to be. Government authorities can recharacterize a transaction into something other than what the parties intended.

There are numerous instances when the Internal Revenue Service, judges or juries are in error. They are not infallible. They can thus misread or misapply the legal principles involved in the case, leading to a tax result or other legal consequence that may be contrary to what the taxpayer anticipated, and leading to a tax result or other legal consequence that may be wrong.

The Internal Revenue Service, other governmental agencies, and the courts generally examine the substance and business purpose and economic reality behind a transaction in a very careful manner to determine if the transaction is genuine and is to be granted recognition in the form presented for tax purposes.

Consequently, we need to caution you that the Internal Revenue Service, other governmental agencies, or a court might view the transactions that are the subject of this memorandum in a manner differently than either you or I would view them. Nonetheless, it is our opinion that the anticipated United States taxation consequences that are applicable to the anticipated transaction will be as indicated herein.

Our analysis does not address United States, state, municipal or foreign income taxes, inheritance taxes, gift taxes, estate taxes, property taxes, sales taxes, use taxes, bulk transfer tax, transfer tax, excise tax or any other taxes or duties of any kind, type, or character other than the United States federal income tax consequences and income withholding tax purposes described hereinbelow.

You should be aware that the Internal Revenue Service can charge interest on tax deficiencies and can impose numerous penalties if it disagrees with the tax treatment of the reported transactions.

It is our view based on the information presented to us as expressed herein that it is more likely than not that the anticipated federal United States tax treatment relating to the matters discussed herein will be as we opine herein.

#### Factual Foundation.

1. Sam Wyly is a United States citizen and resident who resides in the State of Texas.
2. Sam Wyly is a director of Michaels Stores, Inc., a Delaware corporation, and might also be considered to be an employee for legal and income tax purposes.
3. Pursuant to a *Non-Statutory Stock Option Plan* Michaels Stores, Inc. has provided Sam Wyly, other employees, and key advisors with a proprietary interest in its Company through the granting of "non-statutory stock options" which upon exercise permits the option holder to purchase shares of Company's authorized Common Stock.
4. Sam Wyly transferred these options to The Tallulah International Trust, a foreign situs grantor trust that is recognized as a "grantor trust" for United States income tax purposes.
5. You anticipate that The Tallulah International Trust will transfer the non-statutory options to an underlying foreign corporation that is wholly owned by a foreign situs non-grantor trust.
6. It is anticipated that the wholly owned underlying foreign corporation of a foreign non-grantor trust will issue a private annuity to The Tallulah International Trust in exchange for the receipt of non-statutory options of an equivalent value.

7. It is our understanding that it is the express intent of the parties to the transaction that the value of the non-statutory options will equal the value of the private annuity and that no gift or bargain sale or discounted sale price will arise as a result of the transaction. Further, it is our understanding that the private annuity is intended to be issued in an amount that is equal to the fair market value of the non-statutory options that are being sold in exchange for the private annuity. Neither any gift element nor any "bargain sale element" are intended to be made by you with respect to this private annuity transaction.

8. It is anticipated that the private annuity payments will not be secured by, chargeable to, or dependent upon the non-statutory options sold in exchange for the annuity. The amount of the annuity payments will be based on the fair market value of the non-statutory options at the time of the effective date of the Annuity Agreement.

9. We understand that the private annuity is intended to be unsecured. There are to be no security interests, guarantees, specific funds, or other forms of collateral or assurances that the private annuity payments will be made by the corporation other than the mere unsecured contractual promise of such corporation that it will make the annuity payments as they become due under the terms of the annuity agreement.

10. We further understand that the private annuity payments will not be chargeable to or dependent upon the non-statutory options transferred by The Tallulah International Trust in exchange for the annuity. Any income generated by the non-statutory options will belong to the foreign corporation outright, and will not be chargeable to the annuity payments.

11. We understand that the amount of the annuity payments will be based on the fair market value of the non-statutory options being exchanged for the private annuity at the time of the effective date of the Annuity Agreement and will not be based on any income generated by the non-statutory options that are being transferred for the private annuity.

12. We also understand that upon the consummation of the Annuity Agreement the possession and/or enjoyment of the non-statutory options being exchanged for the private annuity will reside exclusively with the acquiring foreign corporation, and The Tallulah International Trust will not preserve or reserve any control of any kind or character over such non-statutory options or any income therefrom that would constitute a retained interest in the possession and/or enjoyment of the non-statutory options being exchanged for the private annuity. It is thus expressly intended that The Tallulah International Trust will irrevocably surrender the enjoyment, control, ownership, and all economic benefits attributable to the ownership of the non-statutory options which are sold in exchange for the private annuity.

13. It is our understanding that the private annuity payments will contain an interest factor in the amount stipulated by the Internal Revenue Service Revenue Ruling that applies for the month in which the annuity agreement is entered into.

14. We understand that the corporation issuing the private annuity is not in the business of issuing annuities from time to time, and it will not issue any additional annuities during the term of its private annuity agreement with The Tallulah International Trust.

15. We further understand that the corporation issuing the private annuity is not a life insurance company or a bank and is not authorized to conduct either the banking business or the life insurance company business and does not intend to obtain such authorization.

16. We have been advised that there are no outstanding encumbrances on the non-statutory options, and consequently we do not express any opinion that relates to this issue.

17. You have advised us that the non-statutory options, which are the subject matter of this letter, are not actively traded on an established market.

18. You have further informed us that the non-statutory stock options are compensatory in nature and were issued to Sam Wyly as part of a stock option plan to compensate key advisors of Michael Stores, Inc.

II. Opinion and analysis of the anticipated 1996 federal income tax consequences that are likely to apply to the proposed sale during the 1996 taxable year of non-statutory options to a foreign corporation in exchange for a private annuity under the circumstances described herein:

A. Pursuant to the general federal income tax treatment of property exchanged for a private annuity the sale of non-statutory options to a foreign corporation in exchange for The Tallulah International Trust's receipt of a deferred private annuity of equivalent value is not a taxable event in the year 1996.

A private annuity transaction typically involves the transfer of appreciated property from an individual to a family member or a controlled corporation in exchange for a promise to pay a

series of equal payments over the annuitant's lifetime.<sup>1</sup> The promise to pay by a family member or corporation that is not in the business of issuing annuities has no ascertainable value, so no gain is currently recognized on the transfer.<sup>2</sup> Gain is recognized over the lifetime of the taxpayer, which is the term of the annuity. Generally, a portion of each annuity payment represents tax-free recovery of the annuitant's investment contract, a portion represents gain on the transfer, and the balance is ordinary income.<sup>3</sup>

The general federal income tax treatment of property exchanged for a private annuity is explained in Research Institute of America Federal Tax Coordinator 2d at Paragraph J-5256 as follows:

"The transfer of property in exchange for an *unsecured* private annuity is not a taxable transaction. Thus, a taxpayer who turns his property over to a member of his family or other private individual, or to his own corporation, which is not a life insurance company or a bank or an organization which issues annuities from time to time, in exchange for payments for life, has no *immediate* taxable gain... Although gain is not taxed immediately, the amount of gain must be reported ratably over the period of the annuitant's life expectancy, but only from that portion of the annual proceeds which is includible in income under the annuity rules."<sup>4</sup> See paragraph J-5256, emphasis is in the original text.

"The actual transfer isn't taxable because the promise to make the lifetime payments is considered to have no determinable value. It makes no difference if the obligor under the private annuity arrangement (i.e., the transferee) is financially sound at the time of the transfer since that 'private' transferee is not in the business of granting annuities, his solvency is not subject to the supervision and restrictions of insurance companies and banks, and may change over the payment period."<sup>5</sup>

A foreign situs United States grantor trust (The Tallulah International Trust) will be transferring non-statutory options to a foreign corporation wholly owned by a foreign non-grantor trust in exchange for the underlying foreign corporation's issuance of a private annuity of an equivalent value. The foreign corporation is not in the business of issuing annuities from time to time, and will not issue any additional annuities during the term of its private annuity agreement with The Tallulah International Trust, and the private annuity will be unsecured. The foreign corporation issuing the private annuity is not a life insurance company or a bank and is not authorized to conduct either the banking business or the life insurance company business and does not intend to obtain such authorization. Under these circumstances, it is our opinion that the annuity will more likely than not be taxable as a private annuity in accordance with the aforescribed federal income tax consequences, as opposed to its being taxable as a commercial annuity or otherwise.

<sup>1</sup> CCH Federal Tax Service at §A:8 120.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Research Institute of America Federal Tax Coordinator 2d at Paragraph J-5256 (Citations Omitted)

<sup>5</sup> *Id.*



B. The private annuity is not intended to contain a gift or bargain sale element, and the exchange of non-statutory options for a private annuity of equivalent actuarial value is likely to be excluded from federal gift tax.

The private annuity is intended to be issued in an amount that is equal to the fair market value of the non-statutory options that are being sold in exchange for the private annuity. Neither any gift element nor any "bargain sale element" are intended to be made by either you or the corporation with respect to this private annuity transaction.

Research Institute of America Estate Planning & Taxation Coordinator describes private annuity gift and estate taxation implications as follows at Paragraph 26,122:

"The transfer will not be subject to gift tax as long as the value of the annuity equals or exceeds the value of the property transferred. The entire value of the transferred property is excluded from the annuitant's gross estate. If the arrangement is properly structured, the value of the transferred property will not be brought back into the estate. In addition, the estate administration costs concerning the transferred property are eliminated. Also the annuitant will not be subject to transfer tax on any post-transfer appreciation in the value of the property. If the annuitant dies before his tabular life expectancy, the property will have been transferred to the obligor for less than its true value. While this may be a disadvantage in a deal with an unrelated party, the annuitant of a private annuity will presumably be pleased to have passed property to a loved one free of transfer tax and for low consideration."

Warnick, 805 T.M., Private Annuities, at page A-27 states:

"...[T]he proper method for deciding whether there is a gift is to compare the fair market value of the property with the present value of the annuity" under the estate and gift tax rules.<sup>6</sup>

<sup>6</sup> Warnick, 805 T.M., Private Annuities, at page A-27. Warnick further explains at Page A-27 and Pages C&A 1 through C&A-2 the following: Generally, private annuity transactions after April 30, 1989 are controlled by Internal Revenue Code §7520, which provides for an interest rate which is 120% of the Federal midterm rate under Internal Revenue Code §1274(d)(1) for the month in which the valuation is made. The Internal Revenue Service has taken the position that the standard Internal Revenue Code §7520 annuity actuarial tables should not be used unless the transfer instrument provides the annuitant with the degree of beneficial enjoyment that is consistent with the type of property interest the standard tables are designed to measure. The Internal Revenue Service litigated this issue in Shapiro Est. V. Comm., T.C. Memo 1993-483 and the Tax Court strongly found in the taxpayer's favor. The Internal Revenue Service's position is that a single life annuity factor (Table A of Estate Tax Regulation §20.2031-7A(c)(5)) could not be used to value the interest of a 91-year-old annuitant because the fund was insufficient to provide a stream of payments for the 18 years of the annuitant's "extreme life expectancy," i.e., until age 109. The Internal Revenue Service unsuccessfully argued that a factor for a "term certain concurrent with one life" should be used because the fund would be exhausted within four years.

The Tax Court firmly rejected the Internal Revenue Service's approach in favor of the taxpayer.

In response, the Internal Revenue Service issued regulations, and in Gift Tax Regulation §25.7520-3(b)(2) the Internal Revenue Service states that it will not allow the use of the standard §7520 tables if the fund from which an annuity is to be paid may be exhausted before the end of the defined period of the annuity (which, under the actuarial assumptions of the Internal Revenue Code §7520 tables is age 110 for a life interest).

We caution you that if the foreign corporation that issues the annuity hereunder were to comply with these regulations, there is a serious risk that the annuity might be determined to be "guaranteed" throughout the annuitant's extreme life expectancy, thereby making the annuity an immediately taxable annuity for United States income tax purposes! In furtherance of this position the Tax

It is our understanding that the fair market value of the non-statutory options will equal the present value of the private annuity, and that a qualified actuary will be retained to calculate and verify this.

Warnick, 805 T.M., Private Annuities, at page A-28 further states that "[t]he simple fact that the value of the property exceeds the value of the annuity should not automatically mean that there has been a taxable gift. Before a finding of a taxable gift, there must be some evidence of the transferor's intent to make a gift."<sup>7</sup>

Additionally, the annuity payments that the foreign grantor trust receives must contain an interest factor in the amount stipulated by the Internal Revenue Service Revenue Ruling that applies for the month in which the annuity agreement is effectuated.

This is very important because the Internal Revenue Service can take the position that the present value of the annuity is less than the present value of the non-statutory options sold in exchange for the annuity if the annuity does not contain an adequate interest rate factor to compensate for the time delay to The Tallulah International Trust in receiving its consideration for the sale and exchange of the non-statutory options.<sup>8</sup> For example, see Warnick, 805 T.M., Private Annuities at page A-35 discussing the United States Tax Court decision in *LaFargue v. Commissioner*, 73 T.C. 40 (1979), which was affirmed in part and reversed in part by the United States Court of Appeals for the 9th Circuit in 689 F.2d 845 (9th Cir. 1982), in which the Tax Court found that the annuity transaction was not taxable as a private annuity for among other reasons:

"...(T)he transaction was not based on the actuarial tables and did not include an interest factor, and there was a large gap between the present value and the fair market value of the annuity. ..."

Court stated in *Shapiro Est. v. Comm.*, T.C. Memo 1993-483, that "[t]he IRS argues that unless the annuity is 'guaranteed' throughout an annuitant's extreme life expectancy...the computation of the annuity's present value must be made on a case by case basis using a special actuarial factor supplied by the Internal Revenue Service." This income tax issue has not yet been litigated. Thus, the avoidance of a gift tax through a complete compliance with the regulations might generate an immediate income tax. Conversely, the avoidance of the income tax issue by "underfunding" the corporation to avoid deeming the annuity to be effectively "guaranteed" throughout the annuitant's extreme life expectancy of the human life span of 110 years might generate a gift tax if the new Gift Tax Regulation is upheld. Furthermore, Income Tax Regulation §1.7520-3(b)(2)(i) similarly prohibits the use of a standard 7520 annuity factor if the annuity is expected to exhaust the fund before the last possible annuity payment is made in full assuming that the annuitant (Sam Wyty) will survive until the age of 110 years. The Internal Revenue Service has also promulgated new Estate Tax Regulations which are consistent with the Gift Tax Regulations and Income Tax Regulations cited above. (For example, Estate Tax Regulation §20.7520-3(b)(2)(i) requires the fund to be able to pay all annuity payments in full under the assumption that Sam Wyty, the annuitant, will survive until the age of 110 years. It is at least arguable that these new Income Tax Regulations, Gift Tax Regulations, and/or Estate Tax Regulations will be held to be invalid in accord with the reasoning of the United States Tax Court in *Shapiro Est. v. Comm.*, T.C. Memo 1993-483. Because the The Tallulah International Trust will not retain any mortgage, lien, pledge, or security interest in or with respect to the non-statutory options designated in Schedule "A", and there is and shall be no security or collateral for the payment of the Annuity hereunder, and the Obligor corporation will not establish any security or any fund or other specific chargeable source for the payment of the purchase price (being the Annuity) hereunder it is questionable whether that the Internal Revenue Service would be successful in an attack that the Annuity is a "guaranteed" Annuity.

<sup>7</sup> In *Beattie v. Comm.*, 159 F.2d 788 (6th Cir. 1947) the court held there was no gift, despite evidence that the annuity was worth only 30% of the value of the property, because there was no evidence of the transferor's intent to make a gift. (However, in *Beattie* the transferee was an educational institution, not a member of the transferor's family.) As a practical matter it would be difficult to show the absence of donative intent when the transferee is "related to" the transferor.

<sup>8</sup> *Id.*

Although the United States Court of Appeals for the 9th Circuit reversed the Tax Court's holding that the transaction did not involve a private annuity, it is important that the annuity contain an adequate interest factor to account for the time value of money.

In your situation it is clearly the intent of the parties that the price of the annuity is to be equal to the value of the non-statutory options being exchanged for the annuity, and no gift or other valuation benefit in excess of such value is intended to be received by either party to the agreement. It is thus our opinion that it is more likely than not that no gift tax will be imposed on your disposition of the non-statutory options in exchange for the grantor trust's receipt of a private annuity of an equivalent value, provided the actuarial value of the non-statutory options being transferred in exchange for the receipt of the private annuity are of an equivalent actuarial value.

You have further advised us that the foreign corporation that is issuing the private annuity will be adequately capitalized to fully comply with Gift Tax Regulation §25.7520-3(b)(2), Estate Tax Regulation §20.7520-3(b)(2), and Income Tax Regulation §1.7520-3(b)(2)(i), which should enable the corporation to fund the annuity through Sam Wyly's human life span as defined in such regulations, thus avoiding a gift tax assessment that otherwise might be asserted had these regulations been violated.

C. The annuity payments must be unsecured to avoid immediate taxation of The Tallulah International Trust in 1996 with respect to the disposition of the non-statutory options in exchange for an annuity of an equivalent value.

The United States Tax Court has held that the private annuity income tax rules apply only to private annuities that are unsecured. If the annuity payments are secured the annuity will be taxable as if it were a commercial annuity rather than a private annuity. (See *Estate of Lloyd Bell*, (1973) 60 TC 469 and *212 Corp.*, (1978) 70 TC 788.)

For example, the Tax Court in *Bell* held that the property transferred in exchange for the private annuity was secured because such property was placed in escrow as security for the annuity payments, and the annuity agreement also provided for a "cognovit" judgment against the parties issuing the annuity in the event they defaulted in making their annuity payments. Consequently, the Tax Court applied the rules pertaining to commercial annuities to the transaction and held that the taxpayers had an *immediately taxable gain* when they exchanged their appreciated stock in exchange for the secured private annuity.

It is our understanding that the private annuity being issued to The Tallulah International Trust is intended to be unsecured. There are to be no security interests, guarantees, specific funds, or other forms of collateral or assurances that the private annuity payments will be made by the corporation other than the mere unsecured contractual promise of such

corporation that it will make the annuity payments as they become due and payable under the terms of the annuity agreement.

In addition, the private annuity payments will not be chargeable to or dependent upon the non-statutory options transferred by you in exchange for the annuity. The options and any proceeds and/or income generated by the options will belong to the corporation outright, and will not be chargeable to the annuity payments. The amount of the annuity payments will be based on the fair market value of the non-statutory options being exchanged for the annuity as of the date of the Annuity Agreement, and will not be based on the income generated by the non-statutory options being exchanged for the annuity.

Furthermore, the possession and/or enjoyment of the non-statutory options being sold in exchange for the private annuity will reside exclusively with the corporation, and you will not preserve or reserve any control of any kind or character over such non-statutory options and the income therefrom that would constitute a retained interest in the possession or enjoyment of the non-statutory options being sold in exchange for the private annuity. It is thus expressly intended that you will irrevocably surrender the enjoyment, control, ownership, and all economic benefits attributable to the ownership of the non-statutory options which are being sold in exchange for the private annuity.

Consequently, provided that the private annuity payments will be unsecured and will always remain unsecured it is our opinion that it is more likely than not that the private annuity will not be taxable as a secured annuity which is taxable as a commercial annuity.<sup>9</sup>

D. It is more likely than not that the original issue discount tax treatment of debt instruments (that could impose a tax on the annuity prior to the receipt of the annuity payments) will not apply to the contemplated annuity transaction.

In early April, 1995, the Internal Revenue Service issued proposed regulations regarding the applicability of the original issue discount rules to deferred private annuities, among other types of transactions.

The proposed regulations seek to treat certain annuity contracts as debt instruments for federal income tax purposes. This means that, under certain circumstances, the income flowing from assets transferred in exchange for an annuity would be taxable to the annuitant in the year earned, regardless of the year in which the annuity payments were received. The proposed regulations provide that this adverse tax treatment may be avoided as long as the annuity payments under the contract are periodic payments made at least annually for the life

<sup>9</sup> However, as we indicated in footnote number 6, *supra*, we again advise you of the potential risk that the compliance with the new regulations under Internal Revenue Code §7520, such as Income Tax Regulation §1.7520-3(b)(2)(i), might cause the annuity to be constructively secured or guaranteed, which could lead to an immediate income taxation of the annuity from the disposition of the options by the Trust in the year 1998.

or lives of one or more individuals, the payments do not increase during the term of the contract, and the payments begin within one year of the date of the annuitant's initial investment in the contract. (See Proposed Income Tax Regulation §1.1275-1 (d)(2).)

However, the Preamble to the Proposed Regulations indicates that the proposed regulations, "only apply to annuity contracts that are also debt instruments under general principles of federal income tax law... For example, an annuity contract under which payments are wholly contingent on the continued life of an individual generally is not a debt instrument for federal income tax purposes. As a result, such a contract will continue to be taxed as an annuity contract under Internal Revenue Code §72."

The explanation to the proposed regulations thus suggests that annuity contracts under which payments are wholly contingent on the life of an individual "generally" will not be recharacterized as debt instruments and will not be taxed as such – even when such contingent payments are deferred under the contract. However, the explanation does not entirely eliminate the possibility that the IRS might proceed with such a recharacterization in certain cases and impose tax accordingly.

This issue is discussed in Research Institute of America Federal Tax Coordinator 2d at Paragraph J-4057 as follows:

"The proposed rules would only apply to annuity contracts that were also debt instruments under general principles of federal income tax law. An annuity contract that was not such a debt instrument would not be subject to the OID rules, and it would be unnecessary to determine if it was covered by the exception. Thus, for example, an annuity contract whose payments were wholly contingent on the continued life of an individual wouldn't be a debt instrument for federal income tax purposes and would continue to be taxed as an annuity contract under Code Sec. 72."

This appears to be consistent with the Internal Revenue Code statute being construed, §1275(a)(1)(B)(i) which in pertinent part states that the "term 'debt instrument' shall not include any annuity contract to which section 72 applies and which - depends (in whole or in substantial part) on the life expectancy of 1 or more individuals..."

Thus, it is our view that it is more likely than not that the original issue discount tax treatment of debt instruments (that could impose a tax on the annuity prior to the receipt of the annuity payments) will not apply to the contemplated annuity transaction.

E. The disposition of compensatory non-statutory options by The Tallulah International Trust, a grantor trust, in an arm's length transaction under which non-statutory options<sup>10</sup> are transferred in exchange for the receipt by The Tallulah International Trust of a substantially nonvested private annuity of an equivalent value issued by the obligor corporation is not a taxable event in the year 1996.

It is our opinion that it is more likely than not that an exchange of non-statutory stock options for a private annuity by The Tallulah International Trust, a grantor trust, will not be subject to an immediately taxable event because the private annuity is "substituted for" the non-statutory stock options under Income Tax Regulation §1.83-7(a) and such annuity payments are more likely than not taxable as ordinary income upon receipt.<sup>11</sup>

The federal income tax treatment of the foreign grantor trust's non-statutory stock options which are not traded on an established market is generally covered in Internal Revenue Code §83 and Income Tax Regulation §1.83-7.<sup>12</sup>

Internal Revenue Code §83 does not initially apply to the taxation of non-qualified non-statutory stock options because the options are not actively traded on an established market.<sup>13</sup>

<sup>10</sup> For options that do not have a readily ascertainable fair market value, the mere grant of the option is not treated as a transfer and application of the statute is postponed until the option is exercised. (See CCH Federal Tax Service §B 6 62)

<sup>11</sup> Although we have not been asked to opine on whether the transfer of non-transferable non-statutory stock options to a grantor trust is an immediate taxable event, our research indicates that such transfer should not trigger a taxable event. In Private Letter Ruling 9349004, the Internal Revenue Service ruled that non-statutory stock options issued to a taxpayer and transferred to a trust created for the benefit of the taxpayer's descendant's will not cause the receipt of income or gain to the taxpayer. The Internal Revenue Service concluded that the transfer to the trust did not constitute a disposition under Income Tax Regulation §1.83-7(a) because the transfer was not pursuant to an arm's length transaction, and a non-arm's length disposition of an option not taxed at grant should not cause compensation income to be recognized. However, if the trustee of the trust exercises the options, the taxpayer (or the taxpayer's estate) would be in receipt of taxable income under Internal Revenue Code §83(a) and the corporation issuing the options would be entitled to an Internal Revenue Code §83(h) deduction.

<sup>12</sup> Internal Revenue Code §83(a) provides that if property is transferred in connection with the performance of services to any person other than the person for whom the services are performed, the excess of (1) the fair market value of the property (determined without regard to any restrictions other than a restriction which by its terms will never lapse) at the first time the rights of the person having a beneficial interest in the property are transferable or are not subject to a substantial risk of forfeiture, whichever occur earlier, over (2) the amount, if any, paid for the property, will be included in the gross income of the person who performs the services in the first taxable year in which the rights of the person having the beneficial interest in the property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable. However, Internal Revenue Code §83(e)(3) provides in pertinent part that "[t]his section shall not apply to the transfer of an option without a readily ascertainable fair market value." Thus, Internal Revenue Code §83 should not apply to the The Tallulah International Trust's non-statutory options because the non-statutory options are not traded on an established market, and thus as a practical matter do not have a readily ascertainable value. (See CCH Federal Tax Service §B 6 221.)

<sup>13</sup> Income Tax Regulation §1.83-7(b)(1) states in pertinent part that "...[o]ptions have a value at the time they are granted, but that value is ordinarily not readily ascertainable unless the option is actively traded on an established market. If an option is actively traded on an established market, the fair market value of such option is readily ascertainable for purposes of this section." [Emphasis added.] It is our understanding that the non-statutory options which are the subject matter of this opinion letter are not actively traded on an established market, and thus the non-statutory options do not have a readily ascertainable value making Internal Revenue Code §83 inapplicable pursuant to Internal Revenue Code §83(e)(3).

Thus, because the non-statutory options currently held by the The Tallulah International Trust, a grantor trust, are not traded on an established market and do not meet the conditions imposed under Income Tax Regulation §1.83-7(b), they will not likely have a readily ascertainable fair market value, and will not be governed under Internal Revenue Code §83. As a practical matter no option will be considered to have a readily ascertainable value unless it is actively traded on an established market. (See CCH Federal Tax Service §B 6 221.)

Billman, 383 T.M., Nonstatutory Stock Options, at pages A-5 and A-6 states:

"...[O]ptions that are not actively traded on an established market do not have a readily ascertainable fair market value...Moreover, the regulations create an irrebuttable presumption that an untraded option does not have a readily ascertainable fair market value unless four conditions are met:

- (1) the option is transferable by the optionee;
- (2) the option is exercisable immediately in full by the optionee;
- (3) neither the option, nor the underlying property is subject to any restrictions that have a significant effect on the option's value; and
- (4) the fair market value of the "option privilege" is readily ascertainable.

In general, the effect of this rigorous approach to valuation of untraded options is to deny readily ascertainable fair market value status at option grant, forcing taxation at option exercise."

However, if an option without a readily ascertainable value is sold or otherwise disposed of before it is exercised (e.g. in exchange for a private annuity of an equivalent value), the restricted property rules will apply to the transfer of money or other property received in the same manner as they would have applied had the property been transferred<sup>14</sup> pursuant to the exercise of the option.<sup>15</sup>

*Thus, in the event that the non-statutory options are exchanged for a private annuity, the taxation of the transaction would be analyzed as if the option were exercised, and the amount [the private annuity] to be included as gross income would be determined under Internal Revenue Code §83(a) and §83(b).<sup>16</sup>*

Billman, 383 T.M., Nonstatutory Options, at page A-19 states:

"If an untraded option is not taxed at grant, §83(e)(3) provides that §83 will apply to the exercise of the option. *If the property received upon option exercise is restricted, §83 will apply to that receipt of property in the same manner as it applies to a direct transfer of restricted property in a nonoption context.*" [Emphasis added].

<sup>14</sup> Income Tax Regulation §1.83-7(a) states in pertinent part that "[i]f section 83(a) does not apply to the grant of such an option because the option does not have a readily ascertainable fair market value at the time of the grant, sections 83(a) and 83(b) shall apply at the time the option is exercised or otherwise disposed of, even though the fair market value of such option may have been become readily ascertainable before such time. If the option is exercised, sections 83(a) and 83(b) apply to the transfer of property pursuant to such exercise, and the employee or independent contractor realizes compensation upon such transfer at the time and in the amount determined under section 83(a) and 83(b). If the option is sold or otherwise disposed of in an arm's length transaction, sections 83(a) and 83(b) apply to the transfer of money or other property received in the same manner as sections 83(a) and 83(b) would have applied to the transfer of property pursuant to an exercise of the option." [Emphasis added].

<sup>15</sup> *Id.*

<sup>16</sup> Income Tax Regulation §1.83-7(a) states in pertinent part that "[i]f the option is exercised, sections 83(a) and 83(b) apply to the transfer of property pursuant to such exercise, and the employee or independent contractor realizes compensation upon such transfer at the time and in the amount determined under section 83(a) and 83(b)." [Emphasis added].

Thus, Internal Revenue Code §83 should apply to the receipt of the private annuity as if the private annuity were "substituted" for the non-statutory options.

According to Billman, 384 T.M., **Restricted Property-Section 83**, at page A-3:

"...[T]he receipt of an unfunded and unsecured promise to pay money in the future...is not a transfer of "property" and thus is not a taxable event under §83. Rather, the questions of whether the receipt of an unfunded and unsecured promise to pay money in the future produces gross income, and, if so, when and in what amount, are to be determined under well-established principles of actual and constructive receipt of income..." [Emphasis added].

In *Richard A. Childs et. al. v. Commissioner*, 103 T.C. No.36 (Nov.14 1994), United States Tax Court Judge Scott held that an annuity issued to an individual was an unsecured promise to pay money in the future, and thus was not "property" as that term is defined under Internal Revenue Code §83.

Thus, it is likely that Internal Revenue Code §83 is inapplicable to The Tallulah International Trust's receipt of a private annuity in exchange for the transfer of non-statutory options of an equivalent value, because a private annuity does not meet the definition of transfer of "property" within the meaning of Internal Revenue Code §83.

Consequently, if Income Tax Regulation §1.83-3(e) directs that Internal Revenue Code §83 and the regulations promulgated thereunder shall not apply to an unsecured promise to pay money in the future, no other Internal Revenue Code Section including Internal Revenue Code §61, should apply to the transaction.<sup>17</sup>

Thus, Internal Revenue Code §83 will likely be inapplicable to the contemplated transaction, and the private annuity income taxation rules (e.g., Revenue Ruling 69-74) will govern the taxation consequences relating to the transfer.<sup>18</sup>

The Research Institute of America Federal Tax Coordinator 2d at Paragraph J-5256 explains the federal income tax treatment of property exchanged for a private annuity as follows:

"The transfer of property in exchange for a private annuity is not a taxable transaction. Thus, a taxpayer who turns his property over to a member of his family or other private individual, or to his own corporation or other corporation, which is not a life insurance company or a bank or an organization which issues annuities from time to time, in exchange for payments for life, has no immediate taxable gain. (Emphasis is included in the text)

<sup>17</sup> Billman, 383 T.M. **Restricted Property-Section 83**, at page A-3.

<sup>18</sup> Private Letter Ruling 9349004 states that if Internal Revenue Code §83(e) does not apply to the grant of the option because it does not have a readily ascertainable value at the time of grant, §83 will apply at the time of the exercise or disposition of the option, and income is realized. Private Letter Rulings may not be cited as Precedent (See Internal Revenue Code §6110(d)(3)) but they reflect the position of the Internal Revenue Service and are thus useful in that regard.



However, the payments under the arrangement are taxable when received, see Paragraph J-5256. The actual transfer isn't taxable because the promise to make the lifetime payments is considered to have no determinable value. It makes no difference if the obligor under the 'private' transferee is not in the business of granting annuities, his solvency is not subject to the supervision and restrictions of insurance companies and banks, and may change over the payment period. (Citations omitted.)"

Because it is unlikely that either the non-statutory options or the private annuity received in exchange therefor is subject to Internal Revenue Code §83 coverage, it is our opinion that it is more likely than not that the non-statutory options transferred in exchange for the private annuity will be taxable as property transferred in exchange for a private annuity in accordance with the afordescribed federal income tax consequences.

F. The subsequent exercise of the non-statutory options by the obligor will not likely generate a taxable event to The Tallulah International Trust because the compensation element will remain opened until the year The Tallulah International Trust receives its annuity payments.

It is our understanding that it is the intention of the parties that the disposition of the non-statutory options will occur in an arm's length transaction at fair market value.

The private annuity rules provide that no taxable event will occur to The Tallulah International Trust until the annuity vests (when the annuity payments are received by The Tallulah International Trust). Consequently, the exercise of the options after the transfer of the options to the obligor foreign corporation is not likely to be a taxable event to The Tallulah International Trust.

It is our understanding that non-statutory options being transferred by The Tallulah International Trust do not have a readily ascertainable value, and therefore their treatment is not governed by Internal Revenue Code §83. Income Tax Regulation §1.83-7 provides guidance with respect to the taxation of nonqualified stock options without a readily ascertainable value,<sup>19</sup> and Internal Revenue Code §83(h)<sup>20</sup> generally governs the allowability, the amount, and the timing of a deduction to an employer with respect to the transfer of property in connection with the performance of services to which Internal Revenue Code §83 applies.

<sup>19</sup>We believe that there is an inherent inconsistency between the Statute and the Regulations, because the Statute clearly states that this Statute shall not apply to the transfer of an option without a readily ascertainable value (see Internal Revenue Code §83(e)(3)), yet the Regulations determine the taxation consequences of an option to which the Statute does not apply.

<sup>20</sup> This section governs the timing of a deduction to an employer with respect to property transferred in connection with the performance of services to which Internal Revenue Code Section 83 applies.

However, Internal Revenue Code §83(h) provides in pertinent part that "[i]n the case of a transfer of property to which this section applies...", thereby excepting property transferred in connection with the performance of services to which Internal Revenue Code §83 does not apply, (e.g. a non-statutory option without a readily ascertainable value).

According to Billman 384 T.M., Restricted Property Section 83, at page A-16 states:

"As to the amount of the deduction, the employer is entitled to a deduction equal to the amount in the income of the employee."

Internal Revenue Code §§3121(a) and 3306(b) define the term "wages" as all remuneration for employment, and Internal Revenue Code §3401(a) provides a similar definition with respect to an employer's obligation for the withholding of income tax.

Income Tax Regulation §§31.3121(a)-1(e), 31.3306(b)-1(c), and 31.3401(a)-1(a)4 generally provide that the medium in which the remuneration is paid is immaterial and the remuneration may be in cash or something other than cash. Under Income Tax Regulation §§31.3121(a)-1(e) and 31.3306(b)-1(e) remuneration paid in items other than cash shall be computed on the basis of the fair value of such items at the time of payment. Income Tax Regulation §31.3121(a)-2 provides that wages are paid by an employer at the time they are actually or constructively paid.

Because the non-statutory options are transferred in an arms length transaction for the exchange of a private annuity of an equivalent value, The Tallulah International Trust has not constructively or actually received "income" until such time as the first annuity payment is issued to and received by The Tallulah International Trust.

Income Tax Regulation §31.3402(a)-1(b) provides that the employer is required to collect the tax by deducting and withholding the amount thereof from the employee's wages as and when paid, either actually or constructively. To constitute constructive payment the wages must be credited to or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn upon at any time, and their payment brought within his own control and disposition.

Thus, the restrictions and condition of receipt of payment relating to the annuity payment will lapse upon the actual receipt of such annuity payment by The Tallulah International Trust.

Consequently, each annuity payment is more likely than not wholly taxable to The Tallulah International Trust as ordinary income, and upon the receipt of each such annuity payment Michaels Stores, Inc., the corporation which issued the non-statutory options, would be entitled to claim a corresponding income tax deduction.

With respect to the withholding tax requirements, liability will be incurred by Michaels Stores, Inc., the corporation which issued the non-statutory options, with respect to the withholding of income tax under Internal Revenue Code §3402(a) with respect to the annuity payments received as "substituted compensation" by The Tallulah International Trust.<sup>21</sup>

It is our opinion that it is more likely than not that no taxable event will occur until the annuity vests (when the annuity payments are received by The Tallulah International Trust), and the exercise of the options after the transfer of the non-statutory options the Obligor corporation pursuant to the annuity transaction is not likely to be a taxable event to Michaels Stores, Inc.

G. The private annuity contract is likely to be treated as being held by a natural person.

The foreign corporation intends to acquire the stock options by issuing a deferred private annuity to The Tallulah International Trust on the life of Sam Wyly. The Tallulah International Trust is a grantor trust for United States income tax purposes because its settlor is Sam Wyly who is a United States person and the trust has United States persons among its beneficiaries, namely Sam Wyly, the spouse of Sam Wyly, and the issue of Sam Wyly. (See the Third Schedule to the Amended and Restated Deed of Settlement.)

The annuity is intended to be classified as a deferred annuity because the commencement of the annuity payments is anticipated to occur more than one (1) year from the date of the annuity agreement.

An annuity which is not classified as a deferred annuity is classified as an immediate annuity. Internal Revenue Code §72(u)(4) defines an "immediate annuity" as an annuity which is purchased with a single premium or annuity consideration, with the annuity to have an annuity starting date which commences no later than one (1) year from the date of purchase of the annuity, and which provides for a series of substantially equal payments to be made not less frequently than annually during the annuity period.

Internal Revenue Code §72(u) in pertinent part indicates that if a deferred annuity contract (which is not an immediate annuity) is held by a person who is not a natural person then such contract shall not be treated as an annuity contract for federal income tax purposes and is to be taxed in accordance with the statutory formula set forth in Internal Revenue Code §72(u) unless an exception therein applies.

However, Internal Revenue Code §72(u) further states that:

<sup>21</sup> Revenue Ruling 67-257 and Revenue Ruling 67-366 stated that amounts received from an employer by an employee upon the cancellation of a non-statutory stock option are wages for wage withholding purposes. Revenue Ruling 78-305 further provided that the employment tax and wage withholding obligations arise only when there is income under §83(a) to the employee.

"For purposes of this paragraph, holding by a trust or other entity as an agent for a natural person shall not be taken into account."

The legislative history to this statutory provision indicates that:

"Under the Act (Tax Reform Act of 1986), if any annuity contract is held by a person who is not a natural person (such as a corporation or trust), then the contract is not treated as an annuity contract for Federal income tax purposes and the income on the contract for any taxable year is treated as ordinary income received or accrued by the owner of the contract during the taxable year. In the case of a contract the nominal owner of which is a person who is not a natural person, but the beneficial owner of which is a natural person, the contract is treated as held by a natural person." (See the Conference Committee Report on Public Law 100-647, reported in Commerce Clearing House of America Standard Federal Tax Reports (1989), at page 13, 189-8.)

This provision is briefly discussed and explained in Knickerbocker, 134-5th T.M., Annuities at page A-25 as follows:

"Section 72(u) does not apply if a trust or other entity holds the contract as agent for a natural person who is its beneficial owner."

Internal Revenue Code §679(a)(1) states in pertinent part that: "A United States person who directly or indirectly transfers property to a foreign trust ... shall be treated as the owner for his taxable year of the portion of such trust attributable to such property if for such year there is a United States beneficiary of any portion of such trust."

As we indicated above, Sam Wyly, a United States person, transferred property to The Tallulah International Trust, a foreign trust having its situs in the Isle of Man, with the trust having United States beneficiaries, namely Sam Wyly, the spouse of Sam Wyly, and the issue of Sam Wyly.

Consequently, Sam Wyly, the grantor-settlor of The Tallulah International Trust, is likely to be treated as the owner of such trust for his taxable year of the portion of such trust attributable to such property. To our knowledge, Sam Wyly is the sole and exclusive settlor of such trust. If so, he is likely to be treated as the owner of the entire trust estate of such trust for his taxable year.

Internal Revenue Code §671 states in pertinent part that: "When it is specified in this subpart that the grantor ... shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor ... those items of income, deductions, and credits against tax of the trust to the extent that such items would be taken into account under this chapter in computing taxable income or credits against the tax of an individual."

Internal Revenue Code §679 is included in subpart E which is expressly governed by Internal Revenue Code §671.

Income Tax Regulation §1.671-1(a) in pertinent part states that: "Subpart E (section 671 and following), Part I, Subchapter J, Chapter 1 of the Code, contains provisions taxing income of a trust to the grantor ... under certain circumstances even though he is not treated as a beneficiary under Subparts A through D (section 641 and following) of such Part I."

Income Tax Regulation §1.671-3(a)(1) in pertinent part states that: "When a grantor ... is treated under Subpart E (section 671 and following) as the owner of any portion of a trust, there are included in computing his tax liability those items of income, deduction, and credit against tax attributable to or included in that portion. For example:

"...If a grantor ... is treated as the owner of an entire trust (corpus as well as ordinary income), he takes into account in computing his income tax liability all items of income, deduction, and credit (including capital gains and losses) to which he would have been entitled had the trust not been in existence during the period he is treated as owner."

Consequently, in light of the rigid tax requirements that require Sam Wyly, a natural person who is the settlor-grantor of The Tallulah International Trust, a grantor trust, to take into account in computing his income tax liability all items of income, deduction, and credit (including capital gains and losses) that pertain to The Tallulah International Trust, a grantor trust, to which he would have been entitled had the trust not been in existence during the period he is treated as owner, we believe that it is more likely than not that the Internal Revenue Service and an applicable court of law will hold that the acquisition and holding of a private annuity contract by The Tallulah International Trust, a grantor trust, will be treated as if the annuity contract were held by Sam Wyly, a natural person who is the settlor-grantor of The Tallulah International Trust.

We thus believe that it is more likely than not that Internal Revenue Code §72(u) will not apply to the annuity transaction and that the annuity will be treated as being held by The Tallulah International Trust, a grantor trust, as an agent acting on behalf of its principal, Sam Wyly, a natural person who is the settlor-grantor of the trust.

### III. Concluding Comments.

The opinions contained herein have been carefully considered by us and reflect the federal income tax consequences we anticipate will apply to the areas we have discussed. Nevertheless, they are only opinions and should not be considered to be guarantees.

Our opinions have been limited to our examination of the federal income tax consequences regarding the issues discussed above, as indicated herein. Our opinion expressly does not

cover or concern itself with other issues not addressed herein, including but not limited to the reality of values.

Our opinion is based upon the status of the federal income tax law as of the date in which this opinion is written. Should there be any change in the applicable tax laws or the facts and circumstances relating to the events described herein, the opinions expressed herein will necessarily require a reevaluation in the light of such changes.

In the event there is any change in the tax principles applicable to our opinion herein, we specifically disclaim any undertaking or obligation to advise you of any such changes which may hereafter occur.


There is no assurance that the Internal Revenue Service or anyone else will not raise issues that have not been discussed herein.

Our analysis is based on the facts and/or assumptions contained in this letter. If such facts and/or assumptions are inaccurate or incomplete, our analysis and conclusions are equally inaccurate or incomplete and might vary substantially from those contained herein.

However, it is our view based on the information presented to us as expressed herein that it is more likely than not that the transactions described herein will be upheld as being bona fide.

Respectfully submitted,

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*A LAW CORPORATION*

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March 7, 1996

The Woody International Trust  
c/o Lorne House Trust Limited, Trustee  
Lorne House, Castletown  
Isle of Man IM91AZ  
British Isles

Dear The Woody International Trust:

You have requested the law firm of Chatzky and Associates, A Law Corporation to review and comment on the proposed sale of compensatory "Nonqualified Options" herein defined and identified in Schedule A, in exchange for a private annuity, with such sale to occur during the 1996 taxable year for United States income tax purposes and United States income withholding tax purposes.

Before we provide you with our analysis of these issues we wish to make you aware that this memorandum is merely an expression of our learned views with respect to these issues. Our opinion does not command any legal authority and may be rejected by a government official, agency, private party, or anyone else. Thus, this memorandum has no binding authority or official status of any kind, type, or character. We cannot assure you or anyone else that the opinions and conclusions contained in this opinion letter will be sustained by the Internal Revenue Service, any court of law, or anyone else. Our opinions represent our views on these issues, but they do not represent our guarantee that they will be followed or accepted by anyone else, and we expressly disclaim any responsibility or liability in the event our views are not followed or accepted.

In addition, this memorandum does not cover or address any issues not expressly covered herein. This memorandum is strictly limited to our interpretation of the United States federal income tax consequences that are likely to arise as a result of the proposed transaction described hereinbelow.

Permanent Subcommittee on Investigations  
**EXHIBIT #34e**

CONFIDENTIAL  
PSI00132210

This memorandum is based on the status of the pertinent United States tax laws as of the date in which this memorandum is written. The tax law changes very rapidly, and should there be any change in the applicable law or the facts and circumstances relating to the events described herein, the opinions expressed herein would necessarily require a reevaluation in the light of such changes. Additionally, pending legislation presently exists that if enacted might impact the proposed transaction and the tax consequences pertaining thereto.

There is no assurance that the Internal Revenue Service or anyone else will not raise issues that have not been addressed herein.

For the sake of brevity, our discussion of the applicable legal principles will omit certain cases and other authorities that may apply to the facts and circumstances of these matters. We will take them into account in issuing this opinion, however.

In the event there is any change in the tax principles or laws applicable to our opinions herein, we specifically disclaim any undertaking or obligation to advise you or anyone else of any such changes that may hereafter occur.

Our opinions are based on the correctness of the facts and circumstances set forth herein, and our understanding that the factual scenario set forth hereinbelow is complete, accurate, true, and correct.

The Internal Revenue Service, other government agencies, and courts each possess the ability to challenge the legitimacy and reality of an entity or a transaction and can claim that an entity or a transaction are something other than what the parties intended them to be. Government authorities can recharacterize a transaction into something other than what the parties intended.

There are numerous instances when the Internal Revenue Service, judges or juries are in error. They are not infallible. They can thus misread or misapply the legal principles involved in the case, leading to a tax result or other legal consequence that may be contrary to what the taxpayer anticipated, and leading to a tax result or other legal consequence that may be wrong.

The Internal Revenue Service, other governmental agencies, and the courts generally examine the substance and business purpose and economic reality behind a transaction in a very careful manner to determine if the transaction is genuine and is to be granted recognition in the form presented for tax purposes.

Consequently, we need to caution you that the Internal Revenue Service, other governmental agencies, or a court might view the transactions that are the subject of this memorandum in a manner differently than either you or I would view them. Nonetheless, it is our opinion that the anticipated United States taxation consequences that are applicable to the anticipated transaction will be as indicated herein.



Our analysis does not address United States, state, municipal or foreign income taxes, inheritance taxes, gift taxes, estate taxes, property taxes, sales taxes, use taxes, bulk transfer tax, transfer tax, excise tax or any other taxes or duties of any kind, type, or character other than the United States federal income tax consequences and income withholding tax purposes described hereinbelow.

You should be aware that the Internal Revenue Service can charge interest on tax deficiencies and can impose numerous penalties if it disagrees with the tax treatment of the reported transactions.

It is our view based on the information presented to us as expressed herein that it is more likely than not that the anticipated federal United States tax treatment relating to the matters discussed herein will be as we opine herein.

**Factual Foundation.**

1. Charles J. Wyly, Jr. is a United States citizen and resident who resides in the State of Texas.
2. Charles J. Wyly, Jr. is a director of Sterling Commerce, Inc., a Delaware corporation.
3. Pursuant to a *Non-Statutory Stock Option Plan* Sterling Commerce, Inc. has provided Charles J. Wyly, Jr., other directors, and key advisors with a proprietary interest in their respective Company through the granting of "non-statutory stock options" which upon exercise permits the option holder to purchase shares of the respective Company's authorized Common Stock.
4. Charles J. Wyly, Jr. transferred these options to The Woody International Trust, a foreign situs grantor trust that is recognized as a "grantor trust" for United States income tax purposes.
5. You anticipate that The Woody International Trust will transfer the non-statutory options to an underlying foreign corporation that is wholly owned by a foreign situs non-grantor trust.

6. It is anticipated that the wholly owned underlying foreign corporation of a foreign non-grantor trust will issue a private annuity to The Woody International Trust in exchange for the receipt of the non-statutory options of an equivalent value.

7. It is our understanding that it is the express intent of the parties to the transaction that the value of the non-statutory options will equal the value of the private annuity and that no gift or bargain sale or discounted sale price will arise as a result of the transaction. Further, it is our understanding that the private annuity is intended to be issued in an amount that is equal to the fair market value of the non-statutory options that are being sold in exchange for the private annuity. Neither any gift element nor any "bargain sale element" are intended to be made by you with respect to this private annuity transaction.

8. It is anticipated that the private annuity payments will not be secured by, chargeable to, or dependent upon the non-statutory options sold in exchange for the annuity. The amount of the annuity payments will be based on the fair market value of the non-statutory options at the time of the effective date of the Annuity Agreement.

9. We understand that the private annuity is intended to be unsecured. There are to be no security interests, guarantees, specific funds, or other forms of collateral or assurances that the private annuity payments will be made by the corporation other than the mere unsecured contractual promise of such corporation that it will make the annuity payments as they become due under the terms of the annuity agreement.

10. We further understand that the private annuity payments will not be chargeable to or dependent upon the non-statutory options transferred by The Woody International Trust in exchange for the annuity. Any income generated by the non-statutory options will belong to the foreign corporation outright, and will not be chargeable to the annuity payments.

11. We understand that the amount of the annuity payments will be based on the fair market value of the non-statutory options being exchanged for the private annuity at the time of the effective date of the annuity agreement and will not be based on any income generated by the non-statutory options that are being transferred for the private annuity.

12. We also understand that upon the consummation of the Annuity Agreement the possession and/or enjoyment of the non-statutory options being exchanged for the private annuity will reside exclusively with the acquiring foreign corporation, and The Woody International Trust will not preserve or reserve any control of any kind or character over such non-statutory options or any income therefrom that would constitute a retained interest in the possession and/or enjoyment of the non-statutory options being exchanged for the private annuity. It is thus expressly intended that The Woody International Trust will irrevocably

surrender the enjoyment, control, ownership, and all economic benefits attributable to the ownership of the non-statutory options which are sold in exchange for the private annuity.

13. It is our understanding that the private annuity payments will contain an interest factor in the amount stipulated by the Internal Revenue Service Revenue Ruling that applies for the month in which the annuity agreement is entered into.

14. We understand that the corporation issuing the private annuity is not in the business of issuing annuities from time to time, and it will not issue any additional annuities during the term of its private annuity agreement with The Woody International Trust.

15. We further understand that the corporation issuing the private annuity is not a life insurance company or a bank and is not authorized to conduct either the banking business or the life insurance company business and does not intend to obtain such authorization.

16. We have been advised that there are no outstanding encumbrances on the non-statutory options, and consequently we do not express any opinion that relates to this issue.

17. You have advised us that the non-statutory options, which are the subject matter of this letter, are not actively traded on an established market.

18. You have further informed us that the non-statutory stock options are compensatory in nature and were issued to Charles J. Wyly, Jr. as part of a stock option plan to compensate directors and key advisors of Sterling Commerce, Inc.

II. Opinion and analysis of the anticipated 1996 federal income tax consequences that are likely to apply to the proposed sale during the 1996 taxable year of non-statutory options to a foreign corporation in exchange for a private annuity under the circumstances described herein:

A. Pursuant to the general federal income tax treatment of property exchanged for a private annuity the sale of non-statutory options to a foreign corporation in exchange for The Woody International Trust's receipt of a deferred private annuity of equivalent value is not a taxable event in the year 1996.

A private annuity transaction typically involves the transfer of appreciated property from an individual to a family member or a controlled corporation in exchange for a promise to pay a series of equal payments over the annuitant's lifetime.<sup>1</sup> The promise to pay by a family member or corporation that is not in the business of issuing annuities has no ascertainable value, so no gain is currently recognized on the transfer.<sup>2</sup> Gain is recognized over the lifetime of the taxpayer, which is the term of the annuity. Generally, a portion of each annuity payment represents tax-free recovery of the annuitant's investment contract, a portion represents gain on the transfer, and the balance is ordinary income.<sup>3</sup>

The general federal income tax treatment of property exchanged for a private annuity is explained in Research Institute of America Federal Tax Coordinator 2d at Paragraph J-5256 as follows:

"The transfer of property in exchange for an *unsecured* private annuity is not a taxable transaction. Thus, a taxpayer who turns his property over to a member of his family or other private individual, or to his own corporation, which is not a life insurance company or a bank or an organization which issues annuities from time to time, in exchange for payments for life, has no *immediate* taxable gain... Although gain is not taxed immediately, the amount of gain must be reported ratably over the period of the annuitant's life expectancy, but only from that portion of the annual proceeds which is includible in income under the annuity rules."<sup>4</sup> See paragraph J-5256, emphasis is in the original text.

"The actual transfer isn't taxable because the promise to make the lifetime payments is considered to have no determinable value. It makes no difference if the obligor under the private annuity arrangement (i.e., the transferee) is financially sound at the time of the transfer since that 'private' transferee is not in the business of granting annuities, his solvency is not subject to the supervision and restrictions of insurance companies and banks, and may change over the payment period."<sup>5</sup>

<sup>1</sup> CCH Federal Tax Service at §A:8.120.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Research Institute of America Federal Tax Coordinator 2d at Paragraph J-5256 (Citations Omitted).

<sup>5</sup> Id.

A foreign situs United States grantor trust (The Woody International Trust) will be transferring non-statutory options to a foreign corporation wholly owned by a foreign non-grantor trust in exchange for the underlying foreign corporation's issuance of a private annuity of an equivalent value. The foreign corporation is not in the business of issuing annuities from time to time, and will not issue any additional annuities during the term of its private annuity agreement with The Woody International Trust, and the private annuity will be unsecured. The foreign corporation issuing the private annuity is not a life insurance company or a bank and is not authorized to conduct either the banking business or the life insurance company business and does not intend to obtain such authorization. Under these circumstances, it is our opinion that the annuity will more likely than not be taxable as a private annuity in accordance with the aforescribed federal income tax consequences, as opposed to its being taxable as a commercial annuity or otherwise.

B. The private annuity is not intended to contain a gift or bargain sale element, and the exchange of non-statutory options for a private annuity of equivalent actuarial value is likely to be excluded from federal gift tax.

The private annuity is intended to be issued in an amount that is equal to the fair market value of the non-statutory options that are being sold in exchange for the private annuity. Neither any gift element nor any "bargain sale element" are intended to be made by either you or the corporation with respect to this private annuity transaction.

Research Institute of America Estate Planning & Taxation Coordinator describes private annuity gift and estate taxation implications as follows at Paragraph 26,122:

"The transfer will not be subject to gift tax as long as the value of the annuity equals or exceeds the value of the property transferred. The entire value of the transferred property is excluded from the annuitant's gross estate. If the arrangement is properly structured, the value of the transferred property will not be brought back into the estate. In addition, the estate administration costs concerning the transferred property are eliminated. Also the annuitant will not be subject to transfer tax on any post-transfer appreciation in the value of the property. If the annuitant dies before his tabular life expectancy, the property will have been transferred to the obligor for less than its true value. While this may be a disadvantage in a deal with an unrelated party, the annuitant of a private annuity will presumably be pleased to have passed property to a loved one free of transfer tax and for low consideration."

Warnick, 805 T.M., *Private Annuities*, at page A-27 states:

"...[T]he proper method for deciding whether there is a gift is to compare the fair market value of the property with the present value of the annuity" under the estate and gift tax rules.<sup>6</sup>

It is our understanding that the fair market value of the non-statutory options will equal the present value of the private annuity, and that a qualified actuary will be retained to calculate and verify this.

Warnick, 805 T.M., *Private Annuities*, at page A-28 further states that "[t]he simple fact that the value of the property exceeds the value of the annuity should not automatically mean that there has been a taxable gift. Before a finding of a taxable gift, there must be some evidence of the transferor's intent to make a gift."<sup>7</sup>

<sup>6</sup> Warnick, 805 T.M., *Private Annuities*, at page A-27. Warnick further explains at Page A-27 and Pages C&A 1 through C&A-2 the following. Generally, private annuity transactions after April 30, 1989 are controlled by Internal Revenue Code §7520, which provides for an interest rate which is 120% of the Federal midterm rate under Internal Revenue Code §1274(d)(1) for the month in which the valuation is made. The Internal Revenue Service has taken the position that the standard Internal Revenue Code §7520 annuity actuarial tables should not be used unless the transfer instrument provides the annuitant with the degree of beneficial enjoyment that is consistent with the type of property interest the standard tables are designed to measure. The Internal Revenue Service litigated this issue in *Shapiro Est. v. Comm.*, T.C. Memo 1993-483 and the Tax Court strongly found in the taxpayer's favor. The Internal Revenue Service's position is that a single life annuity factor (Table A of Estate Tax Regulation §20.2031-7A(d)(6)) could not be used to value the interest of a 91-year-old annuitant because the fund was insufficient to provide a stream of payments for the 18 years of the annuitant's "extreme life expectancy," i.e., until age 109. The Internal Revenue Service unsuccessfully argued that a factor for a "term certain concurrent with one life" should be used because the fund would be exhausted within four years.

The Tax Court firmly rejected the Internal Revenue Service's approach in favor of the taxpayer.

In response, the Internal Revenue Service issued regulations, and in Gift Tax Regulation §25.7520-3(b)(2) the Internal Revenue Service states that it will not allow the use of the standard §7520 tables if the fund from which an annuity is to be paid may be exhausted before the end of the defined period of the annuity (which, under the actuarial assumptions of the Internal Revenue Code §7520 tables is age 110 for a life interest).

We caution you that if the foreign corporation that issues the annuity hereunder were to comply with these regulations, there is a serious risk that the annuity might be determined to be "guaranteed" throughout the annuitant's extreme life expectancy, thereby making the annuity an immediately taxable annuity for United States income tax purposes! In furtherance of this position the Tax Court stated in *Shapiro Est. v. Comm.*, T.C. Memo 1993-483, that "[t]he IRS argues that unless the annuity is 'guaranteed' throughout an annuitant's extreme life expectancy, the computation of the annuity's present value must be made on a case by case basis using a special actuarial factor supplied by the Internal Revenue Service." This income tax issue has not yet been litigated. Thus, the avoidance of a gift tax through a complete compliance with the regulations might generate an immediate income tax. Conversely, the avoidance of the income tax issue by "underfunding" the corporation to avoid deeming the annuity to be effectively "guaranteed" throughout the annuitant's extreme life expectancy of the human life span of 110 years might generate a gift tax if the new Gift Tax Regulation is upheld. Furthermore, Income Tax Regulation §1.7520-3(b)(2)(i) similarly prohibits the use of a standard §7520 annuity factor if the annuity is expected to exhaust the fund before the last possible annuity payment is made in full assuming that the annuitant (Charles J. Wyly, Jr.) will survive until the age of 110 years. The Internal Revenue Service has also promulgated new Estate Tax Regulations which are consistent with the Gift Tax Regulations and Income Tax Regulations cited above. (For example, Estate Tax Regulation §20.7520-3(b)(2)(i) requires the fund to be able to pay all annuity payments in full under the assumption that Charles J. Wyly, Jr., the annuitant, will survive until the age of 110 years. It is at least arguable that these new Income Tax Regulations, Gift Tax Regulations, and/or Estate Tax Regulations will be held to be invalid in accord with the reasoning of the United States Tax Court in *Shapiro Est. v. Comm.*, T.C. Memo 1993-483. Because the The Woody International Trust will not retain any mortgage, lien, pledge, or security interest in or with respect to the non-statutory options designated in Schedule "A", and there is and shall be no security or collateral for the payment of the Annuity hereunder, and the Obligor corporation will not establish any security or any fund or other specific chargeable source for the payment of the purchase price (being the Annuity) hereunder it is questionable whether that the Internal Revenue Service would be successful in an attack that the Annuity is a "guaranteed" Annuity.

<sup>7</sup> In *Beattie v. Comm.*, 159 F.2d 788 (6th Cir. 1947) the court held there was no gift, despite evidence that the annuity was worth only 30% of the value of the property, because there was no evidence of the transferor's intent to make a gift. (However, in *Beattie*

Additionally, the annuity payments that the foreign grantor trust receives must contain an interest factor in the amount stipulated by the Internal Revenue Service Revenue Ruling that applies for the month in which the annuity agreement is effectuated.

This is very important because the Internal Revenue Service can take the position that the present value of the annuity is less than the present value of the non-statutory options sold in exchange for the annuity if the annuity does not contain an adequate interest rate factor to compensate for the time delay to The Woody International Trust in receiving its consideration for the sale and exchange of the non-statutory options.<sup>8</sup> For example, see Warnick, 805 T.M., *Private Annuities* at page A-35 discussing the United States Tax Court decision in *LaFargue v. Commissioner*, 73 T.C. 40 (1979), which was affirmed in part and reversed in part by the United States Court of Appeals for the 9th Circuit in 689 F.2d 845 (9th Cir. 1982), in which the Tax Court found that the annuity transaction was not taxable as a private annuity for among other reasons:

"...(T)he transaction was not based on the actuarial tables and did not include an interest factor, and there was a large gap between the present value and the fair market value of the annuity. ..."

Although the United States Court of Appeals for the 9th Circuit reversed the Tax Court's holding that the transaction did not involve a private annuity, it is important that the annuity contain an adequate interest factor to account for the time value of money.

In your situation it is clearly the intent of the parties that the price of the annuity is to be equal to the value of the non-statutory options being exchanged for the annuity, and no gift or other valuation benefit in excess of such value is intended to be received by either party to the agreement. It is thus our opinion that it is more likely than not that no gift tax will be imposed on your disposition of the non-statutory options in exchange for the grantor trust's receipt of a private annuity of an equivalent value, provided the actuarial value of the non-statutory options being transferred in exchange for the receipt of the private annuity are of an equivalent actuarial value.

You have further advised us that the foreign corporation that is issuing the private annuity will be adequately capitalized to fully comply with Gift Tax Regulation §25.7520-3(b)(2), Estate Tax Regulation §20.7520-3(b)(2), and Income Tax Regulation §1.7520-3(b)(2)(i), which should enable the corporation to fund the annuity through Charles J. Wyly, Jr.'s human life span as defined in such regulations, thus avoiding a gift tax assessment that otherwise might be asserted had these regulations been violated.

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the transferee was an educational institution, not a member of the transferor's family.) As a practical matter it would be difficult to show the absence of donative intent when the transferee is "related to" the transferor.  
8 id.

C. The annuity payments must be unsecured to avoid immediate taxation of The Woody International Trust in 1996 with respect to the disposition of the non-statutory options in exchange for an annuity of an equivalent value.

The United States Tax Court has held that the private annuity income tax rules apply only to private annuities that are unsecured. If the annuity payments are secured the annuity will be taxable as if it were a commercial annuity rather than a private annuity. (See *Estate of Lloyd Bell*, (1973) 60 TC 469 and *212 Corp.*, (1978) 70 TC 788.)

For example, the Tax Court in *Bell* held that the property transferred in exchange for the private annuity was secured because such property was placed in escrow as security for the annuity payments, and the annuity agreement also provided for a "cognovit" judgment against the parties issuing the annuity in the event they defaulted in making their annuity payments. Consequently, the Tax Court applied the rules pertaining to commercial annuities to the transaction and held that the taxpayers had an *immediately taxable gain* when they exchanged their appreciated stock in exchange for the secured private annuity.

It is our understanding that the private annuity being issued to The Woody International Trust is intended to be unsecured. There are to be no security interests, guarantees, specific funds, or other forms of collateral or assurances that the private annuity payments will be made by the corporation other than the mere unsecured contractual promise of such corporation that it will make the annuity payments as they become due and payable under the terms of the annuity agreement.

In addition, the private annuity payments will not be chargeable to or dependent upon the non-statutory options transferred by you in exchange for the annuity. The options and any proceeds and/or income generated by the options will belong to the corporation outright, and will not be chargeable to the annuity payments. The amount of the annuity payments will be based on the fair market value of the non-statutory options being exchanged for the annuity as of the date of the Annuity Agreement, and will not be based on the income generated by the non-statutory options being exchanged for the annuity.

Furthermore, the possession and/or enjoyment of the non-statutory options being sold in exchange for the private annuity will reside exclusively with the corporation, and you will not preserve or reserve any control of any kind or character over such non-statutory options and the income therefrom that would constitute a retained interest in the possession or enjoyment of the non-statutory options being sold in exchange for the private annuity. It is thus expressly intended that you will irrevocably surrender the enjoyment, control, ownership, and all economic benefits attributable to the ownership of the non-statutory options which are being sold in exchange for the private annuity.



Consequently, provided that the private annuity payments will be unsecured and will always remain unsecured it is our opinion that it is more likely than not that the private annuity will not be taxable as a secured annuity which is taxable as a commercial annuity.<sup>9</sup>

D. It is more likely than not that the original issue discount tax treatment of debt instruments (that could impose a tax on the annuity prior to the receipt of the annuity payments) will not apply to the contemplated annuity transaction.

In early April, 1995, the Internal Revenue Service issued proposed regulations regarding the applicability of the original issue discount rules to deferred private annuities, among other types of transactions.

The proposed regulations seek to treat certain annuity contracts as debt instruments for federal income tax purposes. This means that, under certain circumstances, the income flowing from assets transferred in exchange for an annuity would be taxable to the annuitant in the year earned, regardless of the year in which the annuity payments were received. The proposed regulations provide that this adverse tax treatment may be avoided as long as the annuity payments under the contract are periodic payments made at least annually for the life or lives of one or more individuals, the payments do not increase during the term of the contract, and the payments begin within one year of the date of the annuitant's initial investment in the contract. (See Proposed Income Tax Regulation §1.1275-1 (d)(2).)

However, the Preamble to the Proposed Regulations indicates that the proposed regulations, "only apply to annuity contracts that are also debt instruments under general principles of federal income tax law... For example, an annuity contract under which payments are wholly contingent on the continued life of an individual generally is not a debt instrument for federal income tax purposes. As a result, such a contract will continue to be taxed as an annuity contract under Internal Revenue Code §72."

The explanation to the proposed regulations thus suggests that annuity contracts under which payments are wholly contingent on the life of an individual "generally" will not be recharacterized as debt instruments and will not be taxed as such – even when such contingent payments are deferred under the contract. However, the explanation does not entirely eliminate the possibility that the IRS might proceed with such a recharacterization in certain cases and impose tax accordingly.

This issue is discussed in Research Institute of America Federal Tax Coordinator 2d at Paragraph J-4057 as follows:

<sup>9</sup> However, as we indicated in footnote number 6, *supra*, we again advise you of the potential risk that the compliance with the new regulations under Internal Revenue Code §7520, such as Income Tax Regulation §1.7520-3(b)(2)(i), might cause the annuity to be constructively secured or guaranteed, which could lead to an immediate income taxation of the annuity from the disposition of the options by the Trust in the year 1995.

"The proposed rules would only apply to annuity contracts that were also debt instruments under general principles of federal income tax law. An annuity contract that was not such a debt instrument would not be subject to the OID rules, and it would be unnecessary to determine if it was covered by the exception. Thus, for example, an annuity contract whose payments were wholly contingent on the continued life of an individual wouldn't be a debt instrument for federal income tax purposes and would continue to be taxed as an annuity contract under Code Sec. 72."

This appears to be consistent with the Internal Revenue Code statute being construed, §1275(a)(1)(B)(i) which in pertinent part states that the "term 'debt instrument' shall not include any annuity contract to which section 72 applies and which - depends (in whole or in substantial part) on the life expectancy of 1 or more individuals...."

Thus, it is our view that it is more likely than not that the original issue discount tax treatment of debt instruments (that could impose a tax on the annuity prior to the receipt of the annuity payments) will not apply to the contemplated annuity transaction.

E. The disposition of compensatory non-statutory options by The Woody International Trust, a grantor trust, in an arm's length transaction under which non-statutory options<sup>10</sup> are transferred in exchange for the receipt by The Woody International Trust of a substantially nonvested private annuity of an equivalent value issued by the obligor corporation is not a taxable event in the year 1996.

It is our opinion that it is more likely than not that an exchange of non-statutory stock options for a private annuity by The Woody International Trust, a grantor trust, will not be subject to an immediately taxable event because the private annuity is "substituted for" the non-statutory stock options under Income Tax Regulation §1.83-7(a) and such annuity payments are more likely than not taxable as ordinary income upon receipt.<sup>11</sup>

<sup>10</sup> For options that do not have a readily ascertainable fair market value, the mere grant of the option is not treated as a transfer and application of the statute is postponed until the option is exercised. (See CCH Federal Tax Service §5 6.62)

<sup>11</sup> Although we have not been asked to opine on whether the transfer of non-transferable non-statutory stock options to a grantor trust is an immediate taxable event, our research indicates that such transfer should not trigger a taxable event. In Private Letter Ruling 9349004, the Internal Revenue Service ruled that non-statutory stock options issued to a taxpayer and transferred to a trust created for the benefit of the taxpayer's descendant's will not cause the receipt of income or gain to the taxpayer. The Internal Revenue Service concluded that the transfer to the trust did not constitute a disposition under Income Tax Regulation §1.83-7(a) because the transfer was not pursuant to an arm's length transaction, and a non-arm's length disposition of an option not taxed at grant should not cause compensation income to be recognized. However, if the trustee of the trust exercises the options, the taxpayer (or the taxpayer's estate) would be in receipt of taxable income under Internal Revenue Code §83(a) and the corporation issuing the options would be entitled to an Internal Revenue Code §63(h) deduction.

The federal income tax treatment of the foreign grantor trust's non-statutory stock options which are not traded on an established market is generally covered in Internal Revenue Code §83 and Income Tax Regulation §1.83-7.<sup>12</sup>

Internal Revenue Code §83 does not initially apply to the taxation of non-qualified non-statutory stock options because the options are not actively traded on an established market.<sup>13</sup>

Billman, 383 T.M., *Nonsatutory Stock Options*, at pages A-5 and A-6 states:

"...[O]ptions that are not actively traded on an established market do not have a readily ascertainable fair market value...Moreover, the regulations create an irrebuttable presumption that an untraded option does not have a readily ascertainable fair market value unless four conditions are met:

- (1) the option is transferable by the optionee;
- (2) the option is exercisable immediately in full by the optionee;
- (3) neither the option, nor the underlying property is subject to any restrictions that have a significant effect on the option's value; and
- (4) the fair market value of the "option privilege" is readily ascertainable.

In general, the effect of this rigorous approach to valuation of untraded options is to deny readily ascertainable fair market value status at option grant, forcing taxation at option exercise."

However, if an option without a readily ascertainable value is sold or otherwise disposed of before it is exercised ( e.g. in exchange for a private annuity of an equivalent value), the restricted property rules will apply to the transfer of money or other property received in the

<sup>12</sup> Internal Revenue Code §83(a) provides that if property is transferred in connection with the performance of services to any person other than the person for whom the services are performed, the excess of (1) the fair market value of the property (determined without regard to any restrictions other than a restriction which by its terms will never lapse) at the first time the rights of the person having a beneficial interest in the property are transferable or are not subject to a substantial risk of forfeiture, whichever occur earlier, over (2) the amount, if any, paid for the property, will be included in the gross income of the person who performs the services in the first taxable year in which the rights of the person having the beneficial interest in the property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable. However, Internal Revenue Code §83(e)(3) provides in pertinent part that "[t]his section shall not apply to the transfer of an option without a readily ascertainable fair market value." Thus, Internal Revenue Code §83 should not apply to the The Woody International Trust's non-statutory options because the non-statutory options are not traded on an established market, and thus as a practical matter do not have a readily ascertainable value. (See CCH Federal Tax Service §B.6.221.)

<sup>13</sup> Income Tax Regulation §1.83-7(b)(1) states in pertinent part that "...[o]ptions have a value at the time they are granted, but that value is ordinarily not readily ascertainable unless the option is actively traded on an established market. If an option is actively traded on an established market, the fair market value of such option is readily ascertainable for purposes of this section..." [Emphasis added] It is our understanding that the non-statutory options which are the subject matter of this opinion letter are not actively traded on an established market, and thus the non-statutory options do not have a readily ascertainable value making Internal Revenue Code §83 inapplicable pursuant to Internal Revenue Code §83(e)(3).

Thus, because the non-statutory options currently held by the The Woody International Trust, a grantor trust, are not traded on an established market and do not meet the conditions imposed under Income Tax Regulation §1.83-7(b), they will not likely have a readily ascertainable fair market value, and will not be governed under Internal Revenue Code §83. As a practical matter no option will be considered to have a readily ascertainable value unless it is actively traded on an established market. (See CCH Federal Tax Service §B.6.221.)

same manner as they would have applied had the property been transferred<sup>14</sup> pursuant to the exercise of the option.<sup>15</sup>

*Thus, in the event that the non-statutory options are exchanged for a private annuity, the taxation of the transaction would be analyzed as if the option were exercised, and the amount (the private annuity) to be included as gross income would be determined under Internal Revenue Code §83(a) and §83(b).<sup>16</sup>*

Billman, 383 T.M., Nonstatutory Options, at page A-19 states:

"If an untraded option is not taxed at grant, §83(e)(3) provides that §83 will apply to the exercise of the option. *If the property received upon option exercise is restricted, §83 will apply to that receipt of property in the same manner as it applies to a direct transfer of restricted property in a nonoption context.*" [Emphasis added].

Thus, Internal Revenue Code §83 should apply to the receipt of the private annuity as if the private annuity were "substituted" for the non-statutory options.

According to Billman, 384 T.M., Restricted Property-Section 83, at page A-3:

"...[T]he receipt of an unfunded and unsecured promise to pay money in the future...is not a transfer of "property" and thus is not a taxable event under §83. Rather, the questions of whether the receipt of an unfunded and unsecured promise to pay money in the future produces gross income, and, if so, when and in what amount, are to be determined under well-established principles of actual and constructive receipt of income..." [Emphasis added].

In *Richard A. Childs et. al. v. Commissioner*, 103 T.C. No.36 (Nov.14 1994), United States Tax Court Judge Scott held that an annuity issued to an individual was an unsecured promise to pay money in the future, and thus was not "property" as that term is defined under Internal Revenue Code §83.

Thus, it is likely that Internal Revenue Code §83 is inapplicable to The Woody International Trust's receipt of a private annuity in exchange for the transfer of non-statutory options of an

<sup>14</sup> Income Tax Regulation §1.83-7(a) states in pertinent part that "...[i]f section 83(a) does not apply to the grant of such an option because the option does not have a readily ascertainable fair market value at the time of the grant, sections 83(a) and 83(b) shall apply at the time the option is exercised or otherwise disposed of, even though the fair market value of such option may have been become readily ascertainable before such time. If the option is exercised, sections 83(a) and 83(b) apply to the transfer of property pursuant to such exercise, and the employee or independent contractor realizes compensation upon such transfer at the time and in the amount determined under section 83(a) and 83(b). If the option is sold or otherwise disposed of in an arm's length transaction, sections 83(a) and 83(b) apply to the transfer of money or other property received in the same manner as sections 83(a) and 83(b) would have applied to the transfer of property pursuant to an exercise of the option." [Emphasis added].

<sup>15</sup> *Id.*

<sup>16</sup> Income Tax Regulation §1.83-7(a) states in pertinent part that "[i]f the option is exercised, sections 83(a) and 83(b) apply to the transfer of property pursuant to such exercise, and the employee or independent contractor realizes compensation upon such transfer at the time and in the amount determined under section 83(a) and 83(b)." [Emphasis added].

equivalent value, because a private annuity does not meet the definition of transfer of "property" within the meaning of Internal Revenue Code §83.

Consequently, if Income Tax Regulation §1.83-3(e) directs that Internal Revenue Code §83 and the regulations promulgated thereunder shall not apply to an unsecured promise to pay money in the future, no other Internal Revenue Code Section including Internal Revenue Code §61, should apply to the transaction.<sup>17</sup>

Thus, Internal Revenue Code §83 will likely be inapplicable to the contemplated transaction, and the private annuity income taxation rules (e.g., Revenue Ruling 69-74) will govern the taxation consequences relating to the transfer.<sup>18</sup>

The Research Institute of America Federal Tax Coordinator 2d at Paragraph J-5256 explains the federal income tax treatment of property exchanged for a private annuity as follows:

"The transfer of property in exchange for a private annuity is not a taxable transaction. Thus, a taxpayer who turns his property over to a member of his family or other private individual, or to his own corporation or other corporation, which is not a life insurance company or a bank or an organization which issues annuities from time to time, in exchange for payments for life, has no immediate taxable gain. (Emphasis is included in the text) However, the payments under the arrangement are taxable when received, see Paragraph J-5256. The actual transfer isn't taxable because the promise to make the lifetime payments is considered to have no determinable value. It makes no difference if the obligor under the 'private' transferee is not in the business of granting annuities, his solvency is not subject to the supervision and restrictions of insurance companies and banks, and may change over the payment period. (Citations omitted.)"

Because it is unlikely that either the non-statutory options or the private annuity received in exchange therefor is subject to Internal Revenue Code §83 coverage, it is our opinion that it is more likely than not that the non-statutory options transferred in exchange for the private annuity will be taxable as property transferred in exchange for a private annuity in accordance with the aforescribed federal income tax consequences.

<sup>17</sup> Bailman, 383 T.M., Restricted Property-Section 83, at page A-3.

<sup>18</sup> Private Letter Ruling 9349004 states that if Internal Revenue Code §83(a) does not apply to the grant of the option because it does not have a readily ascertainable value at the time of grant, §83 will apply at the time of the exercise or disposition of the option, and income is realized. Private Letter Rulings may not be cited as Precedent (See Internal Revenue Code §6110)(3) but they reflect the position of the Internal Revenue Service and are thus useful in that regard.

F. The subsequent exercise of the non-statutory options by the obligor will not likely generate a taxable event to The Woody International Trust because the compensation element will remain opened until the year The Woody International Trust receives its annuity payments.

It is the intention of the parties that the disposition of the non-statutory options will occur in an arm's length transaction at fair market value in exchange for the receipt by The Woody International Trust of a private annuity which will more likely than not be taxable upon the receipt of the annuity payments by the Woody International Trust.

Internal Revenue Code §83 does not tax the grant of non-qualified non-statutory stock options because the options are not actively traded on an established market,<sup>19</sup> and thus the non-statutory options are not taxed upon exercise or disposition.

Because the non-statutory options without a readily ascertainable value are sold before they are exercised (e.g. in exchange for a private annuity of an equivalent value), the *restricted property rules* of Internal Revenue Code §83 apply to the receipt of the private annuity.<sup>20</sup>

*Thus, the taxation of the transaction will more likely than not be analyzed as if the option were exercised, with the value of the assets being received therefor (the private annuity) to be included as gross income<sup>21</sup> under Internal Revenue Code §83(a) and §83(b).<sup>22</sup>*

<sup>19</sup> Internal Revenue Code §83(a) provides that if property is transferred in connection with the performance of services to any person other than the person for whom the services are performed, the excess of (1) the fair market value of the property (determined without regard to any restrictions other than a restriction which by its terms will never lapse) at the first time the rights of the person having a beneficial interest in the property are transferable or are not subject to a substantial risk of forfeiture, whichever occur earlier, over (2) the amount, if any, paid for the property, will be included in the gross income of the person who performs the services in the first taxable year in which the rights of the person having the beneficial interest in the property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable. However, Internal Revenue Code §83(e)(3) provides in pertinent part that "[t]his section shall not apply to the transfer of an option without a readily ascertainable fair market value." Thus, Internal Revenue Code §83 should not apply to the The Woody International Trust's non-statutory options because the non-statutory options are not traded on an established market, and thus as a practical matter do not have a readily ascertainable value. (See CCH Federal Tax Service §83.221).

<sup>20</sup> Income Tax Regulation §1.83-7(a) states in pertinent part that "...[i]f section 83(a) does not apply to the grant of such an option because the option does not have a readily ascertainable fair market value at the time of the grant, sections 83(a) and 83(b) shall apply at the time the option is exercised or otherwise disposed of, even though the fair market value of such option may have been become readily ascertainable before such time. If the option is exercised, sections 83(a) and 83(b) apply to the transfer of property pursuant to such exercise, and the employee or independent contractor realizes compensation upon such transfer at the time and in the amount determined under section 83(a) and 83(b). If the option is sold or otherwise disposed of in an arm's length transaction, sections 83(a) and 83(b) apply to the transfer of money or other property received in the same manner as sections 83(a) and 83(b) would have applied to the transfer of property pursuant to an exercise of the option." [Emphasis added].

<sup>21</sup> Bilman, 363 T.M., *Nonstatutory Options*, at page A-19 states:

"If an untraded option is not taxed at grant, §83(a)(3) provides that §83 will apply to the exercise of the option. If the property received upon option exercise is restricted, §83 will apply to that receipt of property in the same manner as it applies to a direct transfer of restricted property in a nonoption context." [Emphasis added].

<sup>22</sup> Income Tax Regulation §1.83-7(a) states in pertinent part that "[i]f the option is exercised, sections 83(a) and 83(b) apply to the transfer of property pursuant to such exercise, and the employee or independent contractor realizes compensation upon such transfer at the time and in the amount determined under section 83(a) and 83(b)." [Emphasis added].

With respect to the receipt of a private annuity by The Woody International Trust, the amount of the private annuity to be included as gross income is determined under Internal Revenue Code §83(a) and §83(b).

*However, a private annuity does not qualify as "property" under Internal Revenue Code §83<sup>23</sup>, because it is an unfunded and unsecured promise to pay money in the future,<sup>24</sup> and thus is not immediately taxable to The Woody International Trust until receipt of the annuity payments.*

When the private annuity payments are received by The Woody International Trust, The Woody International Trust will thereupon have received "property" for the performance of services.

Consequently, the "...questions of whether the receipt of an unfunded and unsecured promise to pay money in the future produces gross income, and, if so, when and in what amount, are to be determined under well-established principles of actual and constructive receipt of income..." [Emphasis added].<sup>25</sup>

Thus, the compensation element will remain opened until The Woody International Trust actually receives the annuity payments which will more likely than not be taxable to Charles Wyly, the service provider, as ordinary income upon receipt.<sup>26</sup>

Thus, it is more likely than not that The Woody International Trust's receipt of a private annuity is not a taxable event, because a private annuity does not meet the definition of "property"<sup>27</sup> within the meaning of Internal Revenue Code §83, and The Woody International Trust will not have constructively or actually received "income" until such time as the first annuity payment is issued to and received by The Woody International Trust.

Research Institute of America Federal Tax Coordinator 2d at Paragraph H-2507 further provides: "[T]he determination of *when* property is transferred in connection with the performance of services may determine the tax year the transferee has income from the transfer." [Emphasis added in text]. Income Tax Regulation §1.83-6(a) states in pertinent part that "...[T]he amount of the deduction is equal to the amount included as compensation in the

<sup>23</sup> In *Richard A. Childs et. al. v. Commissioner*, 103 T.C. No.36 (Nov.14 1994), United States Tax Court Judge Scott held that an annuity...was an unsecured promise to pay money in the future, and thus was not "property" as that term is defined under Internal Revenue Code §83.

<sup>24</sup> Id. and Income Tax Regulation §1.83-3(e).

<sup>25</sup> Billman, 384 T.M., Restricted Property-Section 83, at page A-3.

<sup>26</sup> Although we have not been asked to opine on whether the transfer of non-transferable non-statutory stock options to a grantor trust is an immediate taxable event, our research indicates that such transfer should not trigger a taxable event. In Private Letter Ruling 9349004, the Internal Revenue Service ruled that non-statutory stock options issued to a taxpayer and transferred to a trust created for the benefit of the taxpayer's descendant's will not cause the receipt of income or gain to the taxpayer. The Internal Revenue Service concluded that the transfer to the trust did not constitute a disposition under Income Tax Regulation §1.83-7(e) because the transfer was not pursuant to an arm's length transaction, and a non-arm's length disposition of an option not taxed at grant should not cause compensation income to be recognized. However, if the trustee of the trust exercises the options, the taxpayer (or the taxpayer's estate) would be in receipt of taxable income under Internal Revenue Code §83(a) and the corporation issuing the options would be entitled to an Internal Revenue Code §83(h) deduction.

<sup>27</sup> *Richard A. Childs et. al. v. Commissioner*, 103 T.C. No.36 (Nov.14 1994).

gross income of the service provider..." Thus, when the service provider takes the annuity payment into income, the service recipient can claim a corresponding deduction under Internal Revenue Code §83(h).

The receipt of each annuity payment is more likely than not wholly taxable to Charles Wyly, the service provider, as ordinary income, and the amount included in compensation by the service provider, Charles Wyly will equal the amount of the deduction to the service recipient, Sterling Commerce, Inc., the corporation issuing the non-statutory options.

G. The private annuity contract is likely to be treated as being held by a natural person.

The foreign corporation intends to acquire the stock options by issuing a deferred private annuity to The Woody International Trust on the life of Charles J. Wyly, Jr.. The Woody International Trust is a grantor trust for United States income tax purposes because its settlor is Charles J. Wyly, Jr. who is a United States person and the trust has United States persons among its beneficiaries, namely Charles J. Wyly, Jr., the spouse of Charles J. Wyly, Jr., and the issue of Charles J. Wyly, Jr.. (See the Third Schedule to the Amended and Restated Deed of Settlement.)

The annuity is intended to be classified as a deferred annuity because the commencement of the annuity payments is anticipated to occur more than one (1) year from the date of the annuity agreement.

An annuity which is not classified as a deferred annuity is classified as an immediate annuity. Internal Revenue Code §72(u)(4) defines an "immediate annuity" as an annuity which is purchased with a single premium or annuity consideration, with the annuity to have an annuity starting date which commences no later than one (1) year from the date of purchase of the annuity, and which provides for a series of substantially equal payments to be made not less frequently than annually during the annuity period.

Internal Revenue Code §72(u) in pertinent part indicates that if a deferred annuity contract (which is not an immediate annuity) is held by a person who is not a natural person then such contract shall not be treated as an annuity contract for federal income tax purposes and is to be taxed in accordance with the statutory formula set forth in Internal Revenue Code §72(u) unless an exception therein applies.

However, Internal Revenue Code §72(u) further states that:

"For purposes of this paragraph, holding by a trust or other entity as an agent for a natural person shall not be taken into account."



The legislative history to this statutory provision indicates that:

"Under the Act (Tax Reform Act of 1986), if any annuity contract is held by a person who is not a natural person (such as a corporation or trust), then the contract is not treated as an annuity contract for Federal income tax purposes and the income on the contract for any taxable year is treated as ordinary income received or accrued by the owner of the contract during the taxable year. In the case of a contract the nominal owner of which is a person who is not a natural person, but the beneficial owner of which is a natural person, the contract is treated as held by a natural person." (See the Conference Committee Report on Public Law 100-647, reported in Commerce Clearing House of America Standard Federal Tax Reports (1989), at page 13, 189-8.)

This provision is briefly discussed and explained in Knickerbocker, 134-5th T.M., Annuities at page A-25 as follows:

"Section 72(u) does not apply if a trust or other entity holds the contract as agent for a natural person who is its beneficial owner."

Internal Revenue Code §679(a)(1) states in pertinent part that: "A United States person who directly or indirectly transfers property to a foreign trust ... shall be treated as the owner for his taxable year of the portion of such trust attributable to such property if for such year there is a United States beneficiary of any portion of such trust."

As we indicated above, Charles J. Wyly, Jr., a United States person, transferred property to The Woody International Trust, a foreign trust having its situs in the Isle of Man, with the trust having United States beneficiaries, namely Charles J. Wyly, Jr., the spouse of Charles J. Wyly, Jr., and the issue of Charles J. Wyly, Jr..

Consequently, Charles J. Wyly, Jr., the grantor-settlor of The Woody International Trust, is likely to be treated as the owner of such trust for his taxable year of the portion of such trust attributable to such property. To our knowledge, Charles J. Wyly, Jr. is the sole and exclusive settlor of such trust. If so, he is likely to be treated as the owner of the entire trust estate of such trust for his taxable year.

Internal Revenue Code §671 states in pertinent part that: "When it is specified in this subpart that the grantor ... shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor ... those items of income, deductions, and credits against tax of the trust to the extent that such items would be taken into account under this chapter in computing taxable income or credits against the tax of an individual."

Internal Revenue Code §679 is included in subpart E which is expressly governed by Internal Revenue Code §671.

Income Tax Regulation §1.671-1(a) in pertinent part states that: "Subpart E (section 671 and following), Part I, Subchapter J, Chapter 1 of the Code, contains provisions taxing income of a trust to the grantor ... under certain circumstances even though he is not treated as a beneficiary under Subparts A through D (section 641 and following) of such Part I."

Income Tax Regulation §1.671-3(a)(1) in pertinent part states that: "When a grantor ... is treated under Subpart E (section 671 and following) as the owner of any portion of a trust, there are included in computing his tax liability those items of income, deduction, and credit against tax attributable to or included in that portion. For example:

"...If a grantor ... is treated as the owner of an entire trust (corpus as well as ordinary income), he takes into account in computing his income tax liability all items of income, deduction, and credit (including capital gains and losses) to which he would have been entitled had the trust not been in existence during the period he is treated as owner."

Consequently, in light of the rigid tax requirements that require Charles J. Wyly, Jr., a natural person who is the settlor-grantor of The Woody International Trust, a grantor trust, to take into account in computing his income tax liability all items of income, deduction, and credit (including capital gains and losses) that pertain to The Woody International Trust, a grantor trust, to which he would have been entitled had the trust not been in existence during the period he is treated as owner, we believe that it is more likely than not that the Internal Revenue Service and an applicable court of law will hold that the acquisition and holding of a private annuity contract by The Woody International Trust, a grantor trust, will be treated as if the annuity contract were held by Charles J. Wyly, Jr., a natural person who is the settlor-grantor of The Woody International Trust.

We thus believe that it is more likely than not that Internal Revenue Code §72(u) will not apply to the annuity transaction and that the annuity will be treated as being held by The Woody International Trust, a grantor trust, as an agent acting on behalf of its principal, Charles J. Wyly, Jr., a natural person who is the settlor-grantor of the trust.

### III. Concluding Comments.

The opinions contained herein have been carefully considered by us and reflect the federal income tax consequences we anticipate will apply to the areas we have discussed. Nevertheless, they are only opinions and should not be considered to be guarantees.

Our opinions have been limited to our examination of the federal income tax consequences regarding the issues discussed above, as indicated herein. Our opinion expressly does not cover or concern itself with other issues not addressed herein, including but not limited to the reality of values.

Our opinion is based upon the status of the federal income tax law as of the date in which this opinion is written. Should there be any change in the applicable tax laws or the facts and circumstances relating to the events described herein, the opinions expressed herein will necessarily require a reevaluation in the light of such changes.

In the event there is any change in the tax principles applicable to our opinion herein, we specifically disclaim any undertaking or obligation to advise you of any such changes which may hereafter occur.

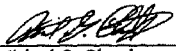
There is no assurance that the Internal Revenue Service or anyone else will not raise issues that have not been discussed herein.

Our analysis is based on the facts and/or assumptions contained in this letter. If such facts and/or assumptions are inaccurate or incomplete, our analysis and conclusions are equally inaccurate or incomplete and might vary substantially from those contained herein.

However, it is our view based on the information presented to us as expressed herein that it is more likely than not that the transactions described herein will be upheld as being bona fide.

Respectfully submitted,

**CHATZKY AND ASSOCIATES**  
**A LAW CORPORATION**

By   
Michael G. Chatzky  
Attorney at Law

**SCHEDULE "A"**

<b>Plan</b>	<b>Options</b>	<b>Issuing Company</b>	<b>Black-Scholes Valuation</b>	<b>Total Value</b>	<b>Discount</b>	<b>Annuity Value</b>
1) 96 Non Stat	1,600,000	Starling Commerce, Inc.	6.54	10,464,000		10,464,000
<b>Total Annuity Value:</b>						<b><u>10,464,000</u></b>

## **MEMORANDUM**

---

To: **Michelle Boucher**

cc: **Sam Wyly**  
**Shari Robertson**

From: **Charles Wyly**

Date: **March 10, 2000**

Re: **SSW Options**

Sam and I recommend to our protectors that all the Sterling Software options be converted to CA options.

Permanent Subcommittee on Investigations

**EXHIBIT #35a**

—  
CONFIDENTIAL  
SEC100023218  
PS100035085

Evan Wyly                      To: Sam\_Wyly@maverickcap  
 04/26/2000 08:34 AM           cc:  
                                  Subject: Re: Michaels Shares

## More info:

----- Forwarded by Evan Wyly/Maverick on 04/26/00 10:30 AM -----



"Michelle Boucher"                      To: evan wyly  
 <mboucher@candw.k                      cc:  
 y>    Subject: Re: Michaels Shares  
 04/26/00 09:25 AM

I did confirm with the trustees this morning, and they are proceeding on the offshore options, selling at \$40 or better.

Offshore we have the following:  
 Yurta Faf  
 292,800 options with August expiration  
 Dortmund  
 57,200 options with August expiration

There are a lot of options held domestically with July expiration. These are the quantities based on February financials, I don't think there has been any changes, but will check with Elaine if you so need this info. I had spoken with Elaine earlier, and I understand that she has asked if you want to exercise and sell any domestic options, but has not heard back from you. Apparently Charles is currently working on some of his domestic options, but not offshore.

July 2000 expiration:  
 SW                                      1,125,000  
 Cheryl                                      75,000  
 Kelly                                      150,000  
 Marmalade                                      150,000

Michelle

-----Original Message-----  
 From: evan\_wyly@maverickcap.com <evan\_wyly@maverickcap.com>  
 To: Michelle Boucher <mboucher@candw.ky>  
 Date: Wednesday, April 26, 2000 11:13 AM  
 Subject: Re: Michaels Shares  
 >  
 >What amounts remain to be sold?  
 >  
 >>Sam recommends that the trustees exercise and sell the remainder of the  
 >>Michaels options that expire this summer. Sell at \$40 or better.  
 >>

Permanent Subcommittee on Investigations  
**EXHIBIT #35b**

Confidential  
 SEC\_ED00043559

PSI\_ED00043559

— = Redacted by the Permanent  
Subcommittee on Investigations

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**From:** Keeley Hennington  
**Sent:** Wednesday, February 28, 2001 7:55 AM  
**To:** MBoucher@candw.ky  
**Subject:** FYI-disregard first e-mail

Don't know what I did - but finished below

---

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----- Forwarded by Keeley Hennington/htst on 02/28/01 09:55 AM -----

Keeley Hennington  
02/28/01 09:52 AM

To: MBoucher@candw.ky  
cc:  
Subject: FYI

I was talking to Charles yesterday and he was kind of thinking out loud on some stuff. He was talking about use of off-shore cash and was using the following for planning - thought I would pass it along even though he was just thinking.

First Dallas - \$10.5 future commitments (Brazos, PDV, ?)  
955 Little Woody - \$10.2 ( [REDACTED] home in Aspen)  
Little Woody - \$4.5 (next week deal)  
Sport Horses - \$3.0 ( capital improvements)  
[REDACTED] - \$4.0 (new house)  
Charity - ???

He mentioned that he plans to make a pledge some time this summer of about \$10M payable \$2/yr. for 5 years that could possibly be funded off-shore. He was saying that these things would use about half of his current available cash off-shore. He also talked about the Lambda properties being sold off-shore and I told him I would look into this and what the tax implications are - this one is messy.

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Permanent Subcommittee on Investigations

EXHIBIT #35c

Confidential  
SEC\_ED00005370

PSI\_ED00005370

**From:** Evan Wyly  
**Sent:** Friday, November 3, 2000 8:59 AM  
**To:** mboucher@candw.ky  
**Subject:** Re: intelecon  
**Attach:** att1.htm

---

FYI, probably both of us need to be more careful with our wording, since I'm not in control or approving; I'm just making recommendations.  
 ----- Forwarded by Evan Wyly/Maverick on 11/03/00 07:45 AM -----

Shari Robertson  
 11/03/00 12:00 AM

To: Evan Wyly/Maverick@maverickcap  
 cc:  
 Subject: Re: intelecon

Remember that it is critical from a U.S. tax standpoint that there is no appearance that the Wyly's are in control of the trusts or the protectors. You tried to word carefully, but I would recommend that you "inform" of the intended recommendation and suggest they inform you if there are aware of any different issues to be considered. In effect Evan approved this txn, you don't want that.

\*\*\*\*\*  
 \*\*\*\*\*  
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 \*\*\*\*\*  
 \*\*\*\*\*

Evan Wyly  
 11/02/00 11:02 AM

To: "Michelle Boucher" <mboucher@candw.ky>  
 cc: Shari Robertson/Maverick@maverickcap, Sam Wyly/htst@htst  
 Subject: Re: intelecon

OK to proceed as described. Thanks.

Permanent Subcommittee on Investigations <b>EXHIBIT #35d</b>
---

**MAV010859**



987

"Michelle Boucher" <mboucher@candw.ky>  
11/02/00 11:05 AM

To: evan wily  
cc: Shari Robertson/Maverick@maverickcap  
Subject: intelecon

George Ellis & I finally caught up today, he is arranging for the subordination agreement to be redrafted to be more clear that the subordination extends only to cover the \$250,000. That was the original intent, and he'll see that it is made more clear.

George feels that the subordination is something we really need to agree to, that Barco (the projector supplier) is their largest creditor (outside of Greenbriar) and to keep the relationships between Barco and Intelecon and Greenbriar and Intelecon working in a productive fashion, we should sign it.

George has discussed this with Steve Turoff and indicate Steve is comfortable with the proposal.

Please confirm that you have no objections to the protectors recommending that the trustees execute the subordination agreement.  
- att1.htm

**MAV010860**

214-880-4833 CHARLES WYLY

699 P03 MAR 30 '00 09:17

To → DAN, Jim, Elaine, Shari, Michelle

"Michelle Boucher"  
<mboucher@candw.k  
y>To: <owly@hst.com>, <don.miller@sterling.com>  
cc: <shar\_robertson@maverickcap.com>  
Subject: First Dallas International update

03/29/00 03:15 PM

= Jw  
3/30  
6pmGood  
Good  
See  
below

The Cayman Fund, First Dallas International (FDI) should be incorporated tomorrow, and I have bank accounts ready to go here at Queensgate Bank & Trust.

I have arranged preliminary paperwork at Lehman Brothers to open the 'IPO' account with them, and we should be able to move money there on Monday.

I await confirmation on the sum being invested in Coolink through FDV, but understand that it is currently \$1 Million - please confirm. Elaine and I are communicating to ensure that we transfer enough money into the First Dallas structure to provide for the investments as well as initial fees. Assuming Coolink will be \$1M and Lehman is \$5M, I am arranging for \$6.25M to be Elysium's initial contribution. I hope this additional \$250K will provide for most of the fees for the next 6-12 mths, depending on investment activity.

I would also like confirmation to proceed with placement of \$5 Million into the Lehman account. I spoke with Lou Schaufele and understand that arrangements have been made that his group will make the investments on behalf of FDI, and advise us at the end of the day as to what was traded. My impression is that trading will be relatively thin, and dependent upon the IPO / Capital Markets activity, but is expected to be up to 5 trades per month. Is this your understanding?

Yes For documentation purposes, we will arrange paperwork so that actual discretion over trading in the Lehman account is granted to First Dallas, Ltd.

I look forward to hearing from you.  
Michelle

#### • 1st Dallas Ventures:

- ✓ Cool Link 1.0 Now 30 days  
1.0 45 days  
1.0
- ✓ ICI 1.250 April
- ✓ Oriton .5 April
- ✓ Lix Co Oil/Gas New-Cost

#### • 1st Dallas Int. Managed by 1st Dallas Ltd.

- Lehman 5.0
- Brazos 5.0
- Li bra 3.5
- Winston Tugay 1.0
- Misc Public/Prt

Permanent Subcommittee on Investigations  
EXHIBIT #36

CONFIDENTIAL  
HST\_PSI000053



**From:** Evan Wylly  
**Sent:** Friday, September 15, 2000 1:52 PM  
**To:** Michelle Boucher <mboucher@candw.ky>  
**Subject:** Re: Fw: michaels sales offshore  
**Attach:** att1.htm

---

OK

"Michelle Boucher" <mboucher@candw.ky>  
 09/15/00 12:39 PM

To: evan wylly  
 cc: Shari Robertson/Maverick@maverickcap  
 Subject: Fw: michaels sales offshore

Copy fyi - I forgot to copy you initially.  
 Michelle

----- Original Message -----

From: Michelle Boucher  
 To: Shari\_Robertson/Maverick%MAVERICKCAP@maverickcap.com  
 Sent: Friday, September 15, 2000 12:11 PM  
 Subject: michaels sales offshore

I spoke to Sam today, he wants us to proceed with selling 200,000 Michaels Stores shares from offshore to aid in raising funds for Ranger/Precept projects.

I would like to recommend selling 175,000 held by East Carroll, and 25,000 of the shares held by East Baton Rouge

I confirmed with him that there is nothing going on with the company that should preclude us from being in the market at this time. He wants Lou to slowly acquire without impacting the market.

Please confirm you are comfortable with me going forward to the Trustees.  
 Michelle

- att1.htm

Permanent Subcommittee on Investigations <b>EXHIBIT #37</b>
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**MAV010831**

10/08/03 13:45 FAX  
06/10 '03 MON 14:06 FAX

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Subcommittee on Investigations

0002

### **BULLDOG TRUST**

The Bulldog Trust was created by a trust agreement dated 11 March 1992 between Sam Wyly, a wealthy US person, and Lorne House Trust Company Limited. The current trustee of the trust is IFG International Trust Company Limited (previously Aundry Trust Company Limited).

The reason for creating the trust was tax driven. Its purpose was to take the assets held to become held within the trust and various Isle of Man companies owned by it outside of the settlor's estate for US gifts and estate tax purposes and at the same time to create a fund the income and gains of which were not attributable to any of the settlor or his family. The assets within the trust are now very substantial.

During 1998 and 1999 the trustees, together with the settlor's advisers, considered a number of possible amendments to the trust so as to create a structure that would be even more "efficient" for tax purposes. At that time a potential problem with the perpetuity period was identified which is summarised in Mann & Partners' letter of 12 May 1998:

Ultimately the revised tax planning arrangements were not proceeded with. However, step one of these arrangements was put into place. This step was for the trustees to declare a new trust, Bulldog II Trust, and then using the power of merger contained in clause 18.9 of the trust agreement to merge the original Bulldog Trust into Bulldog II Trust. The principal reason for this change was a desire to adopt a power to add and delete beneficiaries. At the time, the trustees took the view that the two trusts were "substantially the same". At the same time, the perceived perpetuity problem was also dealt with as was a small Mann technical problem in that persons resident in the Isle of Man had not been excluded from benefiting under the original trust.

In the light of various amendments to US tax legislation since 1992 the settlor has, with his advisers, been reconsidering his income tax position and the trustee is now advised that the merging of the original Bulldog Trust into Bulldog II Trust may have caused the trust to become a grantor trust for US income tax purposes. Clause 5.2 of the original Bulldog Trust contains a specific provision that "the trustee shall not at any time prior to the termination of this trust take any action or do any act which may cause this trust to become a grantor trust for United States income tax purposes".

In the light of the preceding paragraph it is the trustee's view that the purported merger of Bulldog Trust into Bulldog II Trust was void ab initio and the trustee is now seeking confirmation of this point, together with confirmation that all that is required to formalise its decision is a straightforward resolution noting the effect of the Deed of Merger and therefore the fact that the merger was void ab initio.

A consequential point is whether the entirety of the Deed of Merger should be considered void or simply the offensive part, namely the addition of the new Clause 19.

Attached to this note are:-

1. The original trust agreement
2. The October 2000 Declaration of Trust known as Bulldog II
3. The October 2000 Deed of Merger
4. Mann & Partners' letter of 12 May 1998.

Permanent Subcommittee on Investigations

**EXHIBIT #38**

CONFIDENTIAL  
SECI00107222  
PSI00135569  
PSI00135569

14/08/03 13:49 FAX  
06/10 '03 MON 14:57

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Subcommittee on Investigations

40 003  
003

One additional question has arisen from those advising the Settlor in relation to US tax issues. It is apparent, following the issue of various new Regulations by the US Internal Revenue Service and in the light of a generally more conservative approach to tax planning issues, that as regards very recent years certain of the trustee's powers could cause the trust to be treated as a Grantor Trust for US income tax purposes, notwithstanding the voiding of the October 2000 merger. In particular it is the trustee's discretionary distribution powers following the death of the Settlor that are issue.

Clause 5.3 of the original Bulldog Trust agreement contains a sentence "this discretionary distribution power of the trustee shall be limited and void with regard to any distribution that violates any provisions or intent of this trust". It is accepted that any statement of the Settlor's intent, see in particular the final paragraph of Clause 4.2, is not relevant other than in an action for rectification. However, in view of the wording of Clause 5.9 (a) the question is raised as to whether the trustee would be correct in effectively putting a line through any language within Clause 5.2 that caused the trust to be a grantor trust for US tax purposes.

David A. Harris  
IFG International Limited  
International House  
Castle Hill  
Victoria Road  
Douglas  
Isle of Man

6.10.03  
wshh@bulldog0610.03.moz

CONFIDENTIAL  
SECI00107223  
PSI00135570  
PSI00135570

## MEMORANDUM

---

To: **Sam, Evan**  
**Charles, Don**

From: **Shari**

Date: **05/12/00**

Subject: **Isle of Man Trip**

The following is a recap of the IOM trip. If you'd like to discuss any of this let me know.

1) Jurisdictional Issues:

- A) IOM corporations will become regulated as of 12/31/00. This is in the form of the party that formed the corporation making a statement to the regulators that the corporation has books and records. This change allows the IOM regulators an opportunity to make inspections.
- B) South Africa is now charging a dividend tax on all monies repatriated. The S.A. community no longer will get a benefit through an IOM Trust. There is concern that a lot of the S.A. money will leave IOM because there is no tax savings. There may be some shrinkage of trustees because of this loss of business. A reminder that Trident is SA based.
- C) Seems to be concern expressed by the trustees that within a matter of years that there will be further regulation, which might require submission of audited financials and access to trust documents. Bester's (Trident) solution was to hire a "lawyer" custodian to hold the trust deeds, which disclose beneficial ownership. The lawyer would be instructed by the protectors and the trustee not to release the trust deeds to anyone without joint consent. This would slow the process of delivery of the trust deeds down, giving the ability to flee the jurisdiction if it was deemed necessary.

2) Trust remediation steps to be taken at Trident regarding the 1995 trusts (La Fourche & Red Mountain):

- A) Add Sean Cairns as a beneficiary as soon as possible.
- B) Determine the accumulated income as soon as A) is complete.
- C) Determine with Owens whether the income earned on the accumulated income is tainted. (Shari & Michelle to follow-up.)
- D) If the income is tainted, form new corporations and transfer the assets from the original trust to the new trusts in exchange for a low interest-bearing note.

Permanent Subcommittee on Investigations

EXHIBIT #39

MAV008060

- 3) Trust remediation steps to be taken at IFG & Northern regarding 1992 and 1993 trusts:
- A) Merge 1992 trusts (Bulldog & Pitkin) into Bulldog II and Pitkin II to clean up perpetuity issues. This will be done with a short document already prepared by Fullerlove which Mike has reviewed and approved.
  - B) Merge 1993 trusts (Delhi, Lake Providence and Castlecreek) into Bulldog II and Pitkin II. This is being done to minimize the number of trusts for future planning of dividing the existing trusts into sub-trusts.
  - C) Restate Bulldog II and Pitkin II to be a complete trust deed on its own without referring back to prior trust deeds.
  - D) Fullerlove and Harris have been instructed to move forward on A-C.
- 4) Other trust issues:
- A) Division of existing trusts to a specifically named beneficiary can be accomplished through sub-funds that are revocable or sub-trusts that are irrevocable. Trustees awaiting instructions before moving forward on this project.
  - B) Trustees have been informed to plan cash to exercise all Michaels stock options prior to maturity date. Trustees awaiting selling instructions on what to do with stock that is not exercised and sold prior to maturity date.
  - C) Discussed possibility of the trusts purchasing life insurance policies with the trustees. They are awaiting recommendations before proceeding. Mike and Ows need to coordinate to bring this project forward.
  - D) Informed trustees of valuation issues on annuities that were amended and extended previously. Michelle has already requested these valuations from Milliam & Shari. It is expected that the valuations will increase the annuity payable outstanding for the trusts.
  - E) Interviews were held with prospective trustees that might be needed in the future. The following trustees were interviewed and are ranked in the order in which *I recommend they be used*. It would be good to get Mike and Michelle's opinion independent of mine. A number of these people are known by Don Beacock (former MeesPierson) and should check with him for references.
    - 1) Close Bank (recommended by David Harris)
 

Met with Ian Bancroft, Managing Director  
 Marcus \_\_\_\_\_ senior to Ian was off island and did not have an opportunity to meet  
 This was our first visit to this organization. It appeared to me that this trust company was a good fit to the business needs required by the family. Close was recently acquired from Rhea Bros. It is a public company listed on the Irish Stock Exchange (160<sup>th</sup> largest). Market cap of \$2 billion. Services available are: investment management, banking and trust services. There are 10 persons in the trust department. The firm is responsible for over 400 trusts and companies ranging in size from \$750,000 to \$50 million. The average size is \$2.5 – 4 million. Fees are a fixed responsibility fee and time (negotiable). No U.S. operations.
    - 2) Caledonia
 

Met with David Burgess  
 The Walker family (the other large law firm on the island) originally formed this company in the Caymans. This was our second visit. I really like David's approach and think he would work well with the family. He was the one who told us about the SA change. They've been on the IOM a short time and the business doesn't seem to

MAV008061

be growing quickly. Mike has expressed concern whether they will continue with the IOM operations. In discussions with Michelle later she feels that this trust company will continue on the IOM because of the Cayman requirements. Michelle is going to get with David when he's next in the Caymans. I have a good feeling about working with Caledonia and believe we should continue to visit and get acquainted.

3) Intercontinental (former Mees Pierson employee works there)

Met with Collin Platten, Director and Andy Wallis, Accountant (MP)  
Platten started this company in conjunction with a Canadian family. Collin now owns the company independent from this family. Collin was personable and direct. This a small company with offices in IOM and London. IOM staff is 10 and there are 3 in London. His current client mix seems to lean toward the marine industry. He does not advertise for business and only takes clients from referrals. Fee structure is negotiable. The firm has 500+ accounts with 150 of the being trust structures. He is concerned about using leverage if they were minor beneficiaries. There are no minor beneficiaries. Platten was the one who made us aware of the new corporate reporting requirements. He travels to the U.S. twice a year and would be available to stop in Dallas. His business is predominantly marine (boats and yachts), trading (purchased from MeesPierson) and time share ledger management.

4) Anglo Irish

Enda Connolly, Offshore Trust Director and Any MacKellar, Accountant (former MeesPierson)

This is a public company with tremendous growth since the acquisition from MeesPierson. This was our first visit. I personally had a problem with Enda because he talked predominantly to Mike and ignored Michelle and myself, though every once in while he realized what he was doing and included us. Michelle didn't sense this as strongly as I did, but I was seated furthest from Mike. This could make for a difficult situation for the women in the Wyly family to deal with. He had a very smooth almost at times cutesy sales pitch. Having said this, I think it is worth a 2<sup>nd</sup> visit in case I read it wrong. (It was our last visit after 2 full days.)

F) Annuities:

- 1) Preliminary discussions with the trustees regarding the possibility of prepayment at a discount.
- 2) Michelle is to continue with analysis: cash flow requirements, early payment of taxes vs a Maverick ROR.
- 3) Michelle to ask Milliam and Shari to suggest a discount for prepayment.

G) Protector Company

- 1) Confirmed with Fullerlove that the trust deeds allow for one protector
- 2) Confirmed with Fullerlove that the protector can be a company as well as an individual.
- 3) Mike, Michelle and Shari need to continue work with Owens regarding structure. Need to develop a timeline for completion.

H) Audits:

- 1) Discussion were held with trustees recommending that audits be done on a going forward basis. The trustees and the protectors will define audit scope. It will most likely include an audit of income and expenditures and verification of assets. This will be done at the corporation level and consolidated at the trust level. It will not be

**MAV008062**



a full audit, as trust deeds should not be provided to the auditors. Some discussion was held whether a different auditor should be obtained for each trust. More thought needs to be put into this.

- 2) Why audits now? If Michelle becomes a member of the Protector Company the family has lost their independent 3<sup>rd</sup> party verification. In addition to this, the sheer size and lack of the family's day to day involvement in addition to Michelle's status change makes audits mandatory in my opinion going forward. I keep trying to do 100-year planning and this is a step that is necessary. Harris estimated \$1000 pounds per entity. Each trustee is to provide a recommended audit scope in the near future. The protectors need input from the beneficiaries regarding this change and additional cost.

**MAV008063**

— = Redacted by the Permanent Subcommittee on Investigations

<b>Maverick Investments - Foreign *</b>	
Maverick Fund	96,105,652
Held directly by ICM companies	52,488,379
Held in Ranger Fund **	30,831,598
Held in Ranger Fund **	119,695,987
<b>Total Maverick Fund</b>	
Maverick Levered Fund	5,533,116
Held directly by ICM companies	5,533,116
<b>Total Maverick Levered Fund</b>	
<b>Total Maverick Related \$</b>	<b>125,119,103</b>

\* Actual values as of 8/31/01

\*\* Represents total Ranger investment. But only investments held directly by the fund

<b>Precept Investments - Foreign *</b>	
Held directly by ICM Companies	8,000,073
Held in Ranger Fund **	13,810,160
<b>Total Precept Fund \$</b>	<b>21,790,233</b>

\* Based on 8/31/01 values

\*\* Represents total Ranger investment. But only investments held directly by the fund

<b>Ranger Investments - Foreign *</b>	
Held Directly by ICM Companies	103,286,009
<b>Total Investments in Ranger \$</b>	<b>103,286,009</b>

\* Based on 8/31/01 values. Also includes subordinated debt held by the fund

<b>Maverick Fund USA - Domestic (after 10/1 transfers)</b>	
Talullah	138,066
Trust	1,920,710
Trust	1,500,000
Trust	5,284,852
Trust	13,418,251
Held in Ranger	5,224,688

<b>Precept Capital Management - Domestic</b>	
Ranger Capital (Sam)	16,124,396

<b>Precept Fund- Domestic</b>	
Held in Ranger	1,351,215

	Quantity	Value
Ranger Fund I - Domestic		
Trust	3,800,000	3,800,000
Trust	350,000	398,481
Trust	1,500,000	1,500,000
Trust	1,000,000	1,000,000
Trust	3,800,000	3,108,429
Trust	2,050,000	2,143,587
Trust	2,050,000	2,143,587
Trust	18,350,000	18,016,200

Permanent Subcommittee on Investigations  
EXHIBIT #40

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30-Sep-01

MAVERICK Held Directly		9/30/2001
Morehouse		12,907,405.19
Richland		1,144,706.59
Texas		2,352,486.62
W. Carroll		2,231,655.17
E. Carroll		1,137,825.89
E. Baton Rouge		5,005,093.64
Moberly		3,936,532.13
	\$	28,725,685.23

MAVERICK Held Through SCOTTISH		9/30/2001
Lake Providence (SAC P136-015)	\$	52,486,379.18

RANGER		
Value of Maverick Fund Ltd Held in Ranger		8/31/2001
Ranger Fund - PRS (Samia)		1,067,475.97
Ranger Fund - DG (Greenbriar)		2,614,677.03
Ranger Fund LLC		27,249,802.75
	\$	30,931,955.75
Value of Trust Entities Investment in Ranger		8/31/2001 (includes 09/01/01 & 10/01/01 transactions)
East Carroll		10,899,756.41
Devotion		14,480,498.36
Moberly		6,286,221.24
West Carroll		19,472,963.67
Samia		16,704,486.54
Locke		11,180,800.75
Texas		250,000.00
E. Baton Rouge		250,000.00
Greenbriar		500,000.00
Katy		5,064,633.83
Change		2,025,853.53
Pops		5,064,633.83
Bubba		2,025,853.53
Flo Flo		2,025,853.53
Balch		5,064,633.83
	\$	103,298,009.05

PRECEPT				
Value of Precept Held in Ranger			\$	8/31/2001
				13,610,160.00
Value of Trust Entities Investment in Precept				8/31/2001 Approx
	Units	7/31/2001 \$		9,008.99
Greenbriar	265	2,457,123.00		2,387,382.35
E. Carroll	407	3,775,755.00		3,686,856.93
Moberly	47	436,192.00		423,422.53
Samia	108	1,000,148.00		972,970.92

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PSI\_ED00019790

Devotion	71	656,930.00	639,638.29
	\$	8,329,148.00	\$ 8,090,073.02

MAVERICK LEVERED FUND Held Directly		9/30/2001
East Carroll		976,845.42
Katy		514,456.71
Bubba		514,456.71
Pops		514,456.71
Flo Flo		514,456.71
Orange		514,456.71
Salch		514,456.71
	\$	4,065,605.68

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SEC\_ED00019791

PSI\_ED00019791

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Permanent Subcommittee  
on Investigations

Two Mile Ranch Limited - Bessie, Orange, Pops, Flo Flo, Bubba, Balch, Katy (			
Foreign Grantor - 1994	Shares or	Market	
Priced at 12/31/01	Face Value	Value	
	Book	FMV	
<b>Cash</b>			
Bank of Bermuda	119	119	
<b>Total Cash</b>	<b>119</b>	<b>119</b>	
<b>Loans &amp; Advances Receivable</b>			
Intertrust advances	-	-	
<b>Total Loans &amp; Advances Receivable</b>	<b>-</b>	<b>-</b>	
<b>Investments in Real Estate Trusts</b>			
Two Mile Ranch Management Trust	22,035,000	21,459,679	
<b>Total Investments in Real Estate Trusts</b>	<b>22,035,000</b>	<b>21,459,679</b>	
<b>TOTAL ASSETS</b>	<b>22,035,119</b>	<b>21,459,798</b>	
<b>Loans &amp; Advances Payable</b>			
Due to Yurta Faf Limited	15,880,792	15,880,792	
Due to Bessie Trust	211,747	211,747	
Due to Audubon Assets Limited	1,550,000	1,550,000	
Due to Orange, LLC	735,062	735,062	
Due to Pops, LLC	735,062	735,062	
Due to Flo Flo, LLC	735,063	735,063	
Due to Bubba, LLC	735,066	735,066	
Due to Balch, LLC	735,063	735,063	
Due to Katy, LLC	735,063	735,063	
<b>Total Loans &amp; Advances Payable</b>	<b>22,052,917</b>	<b>22,052,917</b>	
<b>TOTAL LIABILITIES</b>	<b>22,052,917</b>	<b>22,052,917</b>	
<b>NET EQUITY</b>	<b>(17,798)</b>	<b>(593,119)</b>	
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>22,035,119</b>	<b>21,459,798</b>	

Permanent Subcommittee on Investigations

**EXHIBIT #41**

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SEC100067098  
PS100078965

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Rosemary's Circle R Ranch - Bessie, Orange, Pops, Flo Flo, Bubba, Balch, Katy (			
Foreign Grantor - 1994	Shares or	Market	
Priced at 12/31/04	Face Value	Value	
	Book	FMV	
<b>Cash</b>			
Bank of Bermuda	260	260	
<b>Total Cash</b>	<b>260</b>	<b>260</b>	
<b>Loans &amp; Advances Receivable</b>			
In'ertrust advances	-	-	
<b>Total Loans &amp; Advances Receivable</b>			
<b>Investments in Real Estate Trusts</b>			
Rosemary's Circle R Ranch Management Trust	45,685,000	43,031,427	
<b>Total Investments in Real Estate Trusts</b>	<b>45,685,000</b>	<b>43,031,427</b>	
<b>TOTAL ASSETS</b>	<b>45,685,260</b>	<b>43,031,687</b>	
<b>Loans &amp; Advances Payable</b>			
Due to Yurta Faf Limited	21,643,988	21,643,988	
Due to Bessie Trust	3,212,000	3,212,000	
Due to Audubon Assets Limited	1,620,267	1,620,267	
Due to Orange, LLC	2,234,690	2,234,690	
Due to Pops, LLC	5,332,177	5,332,177	
Due to Flo Flo, LLC	3,301,860	3,301,860	
Due to Bubba, LLC	8,392,088	8,392,088	
<b>Total Loans &amp; Advances Payable</b>	<b>45,737,070</b>	<b>45,737,070</b>	
<b>TOTAL LIABILITIES</b>	<b>45,737,070</b>	<b>45,737,070</b>	
<b>NET EQUITY</b>	<b>(51,810)</b>	<b>(2,705,383)</b>	
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>45,685,260</b>	<b>43,031,687</b>	

CONFIDENTIAL  
SECI00014728  
PSI00026595

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**From:** Keeley Hennington  
**Sent:** Thursday, June 14, 2001 8:28 AM  
**To:** "Michelle Boucher" <mboucher@candw.ky>  
**Subject:** Re: allocations to LLCs  
**Attachments:** swsubfunds.doc; swallow301.xls

I did not fully appreciate all you had to go through until I saw all this. I have walked through it, but would not say I fully understand everything. If you get a minute and want to walk me back through it, that would be great. I will be in until about 1:00 today and then I have to go out to Tango and ChaCha to help with an insurance issue. Maybe we can talk Tuesday

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The preceding e-mail message (including any attachments) contains information that may be confidential, or constitute non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete it from your system. Use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

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"Michelle Boucher" <mboucher@candw.ky>  
06/13/01 12:16 PM

To: <DavidH@ifgint.com>, <khennington@htst.com>  
cc:  
Subject: allocations to LLCs

Here you go - have fun! Call me when you are ready to discuss :-)  
- swsubfunds.doc  
- swallow301.xls

   
swsubfunds.doc (30 KB) swallow301.xls (61 KB)

Permanent Subcommittee on Investigations  
**EXHIBIT #42**

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PSI\_ED00006047

**Summary of Proposed transactions:**

The transactions have been structured to accomplish the following goals:

- utilize as little cash as possible to fund the LLC's
- wherever possible, use cash from 1992s to repay loans between the real estate companies and 1994 entities – this will transfer cash to the 1994 trusts for future investments, and bring the loan amounts at the LLC levels to the highest level (\$9.5M per LLC - \$500K being retained in Yurta Faf as 5% for proposed Frozen LLC implementation – if adopted)
- use as few subsidiaries of the 1992 trusts as possible

Issues remaining:

- there are still significant intercompany balances between the 1992 entities and the real estate companies. I suggest we get through the LLC allocations and re-evaluate these positions. Perhaps another series of formally documented loans via Security Capital is appropriate to represent the 80% share of expenses in Cottonwood II and Two Mile Ranch.
- I'm unable to decide whether we should move everything directly IOM company to LLC and then 'wrap' the transactions into the loan documents, with letters of authorization from Security Capital authorizing the transfers of the investments to be IOM company to LLC on their behalf, or transfer everything from the 1992 entities to Security Capital and then out to the LLC's. The first option eliminate the need to transfer everything twice, but I think the second approach follows the legal form of the transaction better and seems easier to facilitate. For example, \$21M of Ranger would be transferred to Security Capital and then six transfers out to the LLC's would take place. David and I discussed centralizing the transactions through one 1992 entity and/or one 1994 entity on the other side. I think centralizing them through Security Capital accomplishes the same thing, with fewer steps. Please comment

The transaction flow outlined below indicates transfers direct between 1992 and 1994 entities, but as discussed above, I think it is preferable to move the assets to Security Capital then to the 1994 entities.

**Spitting Lion investment:**

- Total funds advanced to date is \$1,016,000, split 4 ways is \$254,000 per LLC re: [REDACTED]
- Moberly advances \$254,000 to each of Orange, Pops, Flo Flo and Bubba
- Spitting Lion issues 3 additional shares.
- 1 share is transferred to each of Orange, Pops, Flo, Flo and Bubba in return for payment of \$254,000 to Spitting Lion
- Spitting Lion repays Yurta Faf the intercompany of \$1,016,000
- End up with each LLC having invested \$254,000 to Spitting Lion with a corresponding loan payable

**Cash balances**

- Moberly loans cash to each sub fund to balance to the \$10M total per company, totaling \$5,290,584, split as per spreadsheet

[REDACTED] = Redacted by the Permanent  
Subcommittee on Investigations

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PSI\_ED00006048



**Michaels Stores Inc.**

- Once the Lehman Brothers accounts are established for the Cayman LLC's, Yurta Faf transfers each LLC \$500,000 worth of Michael's at the closing price at the end of the selected day. The trade should be via journal entry, and not made in the market.
- Consideration will take the form of an intercompany account between the LLC and Yurta Faf.
- It is anticipated that this will convert to Bessie Trust's 5% contribution in the event that we are able to use the proposed Frozen LLC structure.

**Cottonwood I investment**

- Bubba will buy the stock of Cottonwood I from Bessie Trust for the amount of funds advanced to date, being \$2,815,150.
- To pay the purchase price of \$2,815,150, East Baton Rouge will loan Bubba \$815,150 which they will invest in Cottonwood I, and Bubba will assume Cottonwood I's payable to Greenbriar for \$2Million.
- Cottonwood I will use the \$815,150 to repay Audubon their advance of \$400,000 and Bessie Trust their advance of \$415,150.
- Bubba ends up with \$815,150 payable to East Baton Rouge and \$2Million payable to Greenbriar and a \$2,815,150 investment in Cottonwood I

**Cottonwood II investment**

- Each LLC should take 1/6 of 20% of the total cash committed to Cottonwood II.
- Cottonwood II has had total cash injected of \$6,881,000 via a \$6,880,000 intercompany with Greenbriar and a \$1,000 intercompany with Bessie Trust
- Each LLC will assume 229,367 of the payable to Greenbriar, in return for being issued one share.
- The \$1,000 due to Bessie will remain at the Cottonwood II level for now.
- TO DISCUSS – Trustees to advise what their thoughts are re: shareholdings – ie. End up with one share issued to Bessie Trust and one to each LLC, or issue additional shares to Bessie as well to reflect their 80% 'control' vs. the 1/6 of 20% given to each LLC being represented by 1 share/
- Based on this discussion, Cottonwood II will need to issue more shares accordingly.

**Global Audio Visual stock / Global Audio Visual loan at 10%**

- These will be transferred to Flo Flo, in return for a loan payable to Greenbriar
- Stock will be transferred to reflect total cash invested by Greenbriar, although it is valued at \$0.10 per share
- Loan will be transferred at 5/31 valuation including accrued interest at that date, which equals \$1,037,192.

**Maverick Levered Fund**

- East Carroll Limited will transfer \$500,000 of it's holding of Maverick Levered Fund to each LLC in exchange for a loan from each LLC.

**Ranger Fund**

- Moberly will transfer a total of \$21 Million of Ranger Fund, split between the LLCs as per the attached, in exchange for a loan from each LLC.

**Greenmountain Stock**

- Greenbriar will transfer a total of \$11Million of Greenmountain, split between the LLCs as per the attached, in exchange for a loan from each LLC.

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PSI\_ED00006049

**Mi Casa Limited**

- The outstanding share of Mi Casa will be transferred to Flo Flo. Flo Flo will assume MiCasa's \$1Million loan payable to Greenbriar in exchange for it's equity.

**Two Mile Ranch Limited**

- Each LLC should take 1/6 of 20% of the total cash committed to Two Mile Ranch (\$548,313 each)
- Two Mile Ranch Limited owes Sarnia \$2Million
- Moberly will repay Sarnia the \$2Million, thus transferring the loan from Sarnia to Moberly to reduce the number of companies involved in the overall reallocations.
- Each LLC will assume \$333,333 of this \$2M intercompany in return for equity, thus creating a direct loan between the LLC and Moberly, and eliminating this portion of debt in Two Mile Ranch.
- Two Mile Ranch owes Bessie approximately \$1.5Million. After the LLC's assume the \$2Million from Sarnia via Moberly as above, there is a total of \$1,289,878 of remaining to be allocated to the LLCs – representing \$214,980 per LLC.
- Moberly to advance each LLC an additional \$214,980 which they invest in Two Mile ranch as part of the payment for their equity interest. Two Mile Ranch uses this to repay most of the Bessie intercompany loan.
- TO DISCUSS – Trustees to advise what their thoughts are re: shareholdings – ie. End up with one share issued to Bessie Trust and one to each LLC, or issue additional shares to Bessie as well to reflect their 80% 'control' vs. the 1/6 of 20% given to each LLC being represented by 1 share/
- Based on this discussion, Two Mile Ranch will need to issue more shares accordingly.

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PSI\_ED00006050

1005

FX 11/27

## Invoice

From:  
Richard D. Eiseman Jewels  
514 NorthPark Center  
Dallas, Texas 75225  
214/361-0341

Invoice No: 11210  
Date: November 21, 2000

Sold to: Mr. Charles Wyly Jr.

1. Highly Important Emerald-cut Diamond Ring featuring an emerald-cut diamond weighing 15.71 carats, D color and VS1 in clarity, GIA certified, set into a Pave' Style Diamond and Platinum Mounting.

Special price.....\$ 667,000.00

2. Custom made Highly Important Diamond Necklace featuring at the center an Emerald-cut Diamond weighing 5.20 carats, F in color and VVS2 in clarity. (a detailed description of the necklace, numbers and weights to be supplied upon completion)

Special price..... 759,000.00

Total.... \$ 1,426,000.00

Delivery in Dallas - December 1, 2000  
No Sales Tax Due - to be shipped to Aspen, Colorado

Procedure to Wire Funds to R.D.Eiseman Inc.Cash Account

Sent to: Bank of Texas,

America Bank Assn  
RDEiseman Acct#

Redacted by the Permanent  
Subcommittee on Investigations

Please note, if you need more help, call:  
Bank of Texas, 972-443-2868 or Richard Eiseman 214-361-0341.

Thank you. Your selection is appreciated.

Permanent Subcommittee on Investigations  
EXHIBIT #43a

PSI-JEWEL 00065

1006

Charles-

I talked to Michelle and here are the instructions she gave me:

<sup>support</sup>  
The invoice should be sent to:

Souleiana, Ltd.  
12-14 Finch Road  
Douglas, Isle of Man IM991TT  
Attn: Francis Webb

The invoice should include wire instructions

PSI-JEWEL 00066

1007

12/01/00

SOULIERANA, LTD

17-00400 EMER CUT DIA/PLAT NECKLACE WITH 85.94 CTS TWT INCL 759,000.00  
CENTER EMERALD CUT DIA WEIGHING 5.20CTS F/VVS

	SUB TOTAL	759,000.00
	SALES TAX	0.00
S004178	TOTAL	759,000.00
	PAID	759,000.00

17:37-1-RDE OTHER Richard D. Eiseman Jewels (214) 361-0341

12/01/00

SOULIERANA, LTD

17-00400 EMER CUT DIA/PLAT NECKLACE WITH 85.94 CTS TWT INCL 759,000.00  
CENTER EMERALD CUT DIA WEIGHING 5.20CTS F/VVS

	SUB TOTAL	759,000.00
	SALES TAX	0.00
S004178	TOTAL	759,000.00
P009101	PAID	759,000.00

PSI-JEWEL 00090

17:37-1-RDE OTHER Richard D. Eiseman Jewels (214) 361-0341

12/01/00

SOULIEANA, LTD.

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26-00959	PLATINUM E/C DIAMOND GIA D/VS1,15.71 CARAT W/+/-	667,000.00
	1.00 CARAT DIAS.	1/2216/001

---

	SUB TOTAL	667,000.00
	SALES TAX	0.00
S004172	TOTAL	667,000.00
	PAID	667,000.00

15:52-1-RDE OTHER Richard D. Eiseman Jewels (214) 361-0341

12/01/00

SOULIEANA, LTD.

---

26-00959	PLATINUM E/C DIAMOND GIA D/VS1,15.71 CARAT W/+/-	667,000.00
	1.00 CARAT DIAS.	1/2216/001

---

	SUB TOTAL	667,000.00
	SALES TAX	0.00
S004172	TOTAL	667,000.00
P009093	PAID	667,000.00

PSI-JEWEL 00091

15:52-1-RDE OTHER Richard D. Eiseman Jewels (214) 361-0341

## FUNDS TRANSFER NOTIFICATION

11-29-2000

BANK OF TEXAS  
FUNDS TRANSFER NOTIFICATION

— = Redacted by the Permanent  
Subcommittee on Investigations

R D EISEMAN INC  
CASH ACCOUNT  
PO BOX 822837

DALLAS, TX 75382-2837

WIRE  
XFER

To: R D EISEMAN INC

This funds transfer was received on 2000-11-29, for \$1426000.00.  
The funds have been CREDITED to account # [REDACTED]

## Sender:

Name CITIBANK NA  
ABA # [REDACTED]  
Reference # [REDACTED]  
Received from BANK OF BERMUDA  
By Order Of SOULJEANA LIMITED

## Receiver:

Name BANK OF TEXAS  
ABA # [REDACTED]  
Fed Reference # [REDACTED]

Intermediary Bank :

Beneficiary: RD ELSEMAN INC - CASH ACCOUNT

Beneficiary Bank :

Reference for Beneficiary [REDACTED]

Originator to Beneficiary : INVOICE NO [REDACTED] DATED 21 NOVEMBER 2000

Bank to Bank Information :

Instructing Bank : BANK OF BERMUDA (ISLE OF MAN) LTD

{SEQ NUM}

PSI-JEWEL 00092

— = Redacted by the Permanent  
Subcommittee on Investigations

## **FAX TRANSMITTAL**

---

TO: **Paul** FROM: **Amy Browning**  
COMPANY: **Huntsman** PHONE: **214-891-8343**  
PHONE: **970-920-1910** FAX: **214-891-8339**  
FAX: **970-925-4870** DATE: **February 10, 1997**  
NUMBER OF PAGES (including cover): **1** TIME: **2:10pm**

Pursuant to my telephone conversation, please invoice the recent purchase by [REDACTED] Wyly as follows:

Soulieana Limited  
Lorne House Trust Limited  
c/o Lorne House  
Castletown, Isle of Man  
British Isles

Each invoice should be accompanied by a picture of the item being purchased. In addition, please send these invoices and the necessary documentation to the attention of Shari Robertson, 8080 North Central Expressway, LB31, Dallas TX 75206. The Wyly name should not be noted on the invoices.

If you have any questions, do not hesitate to contact me.

8080 North Central Expressway, Suite 1100 • LB-31 • Dallas, Texas 75206-1895 • 214/891-8343

Permanent Subcommittee on Investigations  
**EXHIBIT #43b**

CONFIDENTIAL  
SEC100066691  
PS100078558



**SOTHEBY'S**

34-35 New Bond Street, London W1A 2AA  
 Telephone: (0171) 493 8080 Telex: 24454 SPBLON-G  
 Telefax No: (0171) 409 3100  
 Registered at the above address. Reg. No. 874867  
 Client Account: 30623910

Mrs Cheryl Wyty

Redacted by the Permanent  
 Subcommittee on Investigations

**Buyer's Invoice**

Please return top copy with payment  
 VAT Reg. No. 512 5492 53

Invoice Number IN64060018 DUPLICATE

Invoice Date 10 JUL 96

Sale Title BRITISH PAINTINGS

Tax Point: 10 JUL 96

Sale Date 10 JUL 96

Lot No.	Hammer Price	VAT on Hammer Price		Buyer's Premium	VAT on Buyer's Premium		Total
		Rate	Amount		Rate	Amount	
The following lot(s) have been sold under the margin scheme and input tax deduction has not been and will not be claimed by Sotheby's.							
0126	140000.00			15500.00			155500.00
0129	4500.00			675.00			5175.00
<p>Page 1 of 1</p> <p>0126</p>							
	144500.00		.00	16175.00		0.00	160675.00
All payments must be made in Pounds Sterling							Total Due

ACCORDING TO OUR CONDITIONS OF BUSINESS, PAYMENT IS DUE IMMEDIATELY AND LATE PAYMENT WILL BE LIABLE TO INTEREST CHARGED AT 18.00 % PER ANNUM

Please do not detach this slip. Return this entire top copy with your payment and include shipping instructions on the reverse.

**BANKERS:- Barclays Bank plc**  
 160 Piccadilly  
 London W1A 7AB  
 Account No.  
 Sort Code 8

Client Account

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 Subcommittee on Investigations

Sale Title BRITISH PAINTINGS

Date 10 JUL 96

Mrs Cheryl Wyty

Invoice No.	Date	Amount Due
IN64060018	10 JUL 96	160675.00

25-JUL-1996 09:11

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 Subcommittee on Investigations

Permanent Subcommittee on Investigations

**EXHIBIT #44**

CONFIDENTIAL  
 PSI00119

TO: **Ronnie Buchanan** From: **Michelle Boucher**  
 FAX: **011-44-** Redacted by the Permanent Subcommittee on Investigations **809-** Redacted by the Permanent Subcommittee on Investigations  
 DATE: **July 18th, 1996**

Dear Ronnie,

The protectorates committee recommends the acquisition of a piece of artwork for Fugue Limited, as follows:

The protectorates also recommend shipping the painting to 8080 N. Central Expressway, Suite 1300, Dallas, Texas, using Fritz Companies to handle the shipment. The contact name for Fritz is as follows:

**Jim Webster**  
Assistant Import Manager  
Fritz Companies Inc. —  
8920 Royal Lane  
Irving Texas 75063 981  
tel: 214-929-7402  
fax: 214-929-7414

The protectorates also recommend that the painting be insured. Please arrange for appropriate insurance to be placed on the artwork. Kindly advise me as to the process of insuring the artwork, and which company has been selected as the insurer.

Finally, the protectorates recommend selling part of Fugue's Treasury Bill that is scheduled to mature on August 1st, 1996, in order to finance the acquisition.

Please address this purchase as soon as possible, if you have any questions, please contact me directly.

Kind regards,

Michelle Boucher  
Michelle Boucher

0121 - 892 - 6121

C. Allen & Co. Ltd.

CONFIDENTIAL  
PSI0011924



# Lorne House Trust Limited

Lorne House · Castletown · Isle of Man · British Isles  
Telephone +1624 823579 · Fax +1624 822952

Ms. Michelle Boucher,  
The Scottish Annuity Company (Cayman) Ltd.,  
Grand Cayman.

Fax to 00 1

Redacted by the Permanent  
Subcommittee on Investigations

19th July, 1996.

*J. Buchanan*

'Noon Day Rest'

thank you for your overnight fax. We will put in train the necessary actions but we would draw to the Committee of Protectors' attention that they are recommending the substitution of a very safe, income-producing asset by one which might be difficult to sell at a profit at short notice and which generates no income, especially since it is suggested that the Trustees should buy it - through Fugue Limited, which is wholly owned by The Bessie Trust - at 222% of the pre-auction estimated price.

We would therefore ask them to confirm, either directly to us or through you under your delegated authority, that:

i) they do not believe that the beneficiaries will need the income which the proposed purchase price could have generated in the near or medium-term future.

ii) that they believe that, over the long term, the painting will gain appreciably more in value than would Treasury Bills with the income reinvested.

We agree that the painting should be insured at all times but suggest that the shipper will probably have a standard policy to cover the journey to Dallas (we will check that this is so). Once it is there it could most conveniently be included as a separately listed item on a household insurance item. We would then pay a pro rata share of the premium. If, for any reason, this procedure will not be acceptable we will seek to discover which fine art insurer will cover risks in America but warn that this might prove a more expensive option.

*R. Buchanan*

R. Buchanan,  
Director, Lorne House Trust Limited  
Trustee: The Bessie Trust.

Internet: <http://www.lorne-house.com/>  
Email: [general@lorne-house.com](mailto:general@lorne-house.com)

Licensed to conduct Investment Business by the Isle of Man  
Financial Supervision Commission

Registered in Isle of Man No. 2056  
Telex No. 62925

A. J. Buchanan (Chairman) F.C.A. · R. Buchanan (Managing) · R. J. Collister · M. G. Gisborne F.C.A.  
A. F. Hahler · The Earl of Rosse (Ireland) · A. E. Wicler · J. K. Basnet (Nepal) (alternate) · S. F. Cairns (alternate)

CONFIDENTIAL  
PSI001192

1014

*See 2D*

Paul Dougherty, Esq.,  
Simcocks,  
50 Athol Street,  
Douglas.

19th July, 1996.

**Purchase of a Painting**

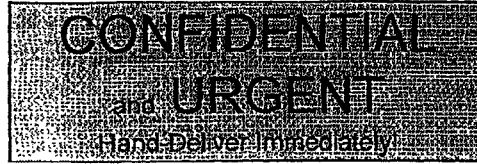
I would be grateful if you could glance at my proposed letter to Michelle Boucher, who has authority to relay the recommendations of the Committee of Protectors of the trust which would ultimately own the painting. We are concerned that the Trustees are covering their backs adequately, without wishing to offend the Settlor (who is also a beneficiary under the trust and, incidentally, a very major client).

This is the sort of problem which we hope that you or Mr. Brownhill will address at the September seminar.

R. Buchanan.

CONFIDENTIAL  
PSI0011745

1015



**FAX TRANSMITTAL**

**Maverick**

TO: **Ronald Buchanan**

FROM: **Mike French**

COMPANY: **Lorne House Trust**

PHONE: **214**

Redacted by the Permanent  
Subcommittee on Investigations

PHONE: **44**

Redacted by the Permanent  
Subcommittee on Investigations

FAX: **214**

FAX: **44**

DATE: **July 19, 1996**

NUMBER OF PAGES (including cover): **3**

TIME: **10:43 AM**

**COMMENTS:**

Attached is language from the Deed of Settlement of the Hessie Trust. This language clearly authorizes a purchase of personal property for personal use or enjoyment in specie by any beneficiary.

Unless there is a clear and unequivocal requirement of IOM law (which I doubt), that any such purchase that is specifically authorized by the trust agreement must nevertheless be weighed against the investment returns that could otherwise be obtained on the funds, then I must assume that this transaction is authorized and lawful. If you wish to search for such a legal prohibition, you should do so at your own expense and not that of the Trust.

The Protectors have already recommend this transaction. Please advise if you are unwilling to proceed on that basis in light of the explicit authorization for the transaction contained in the Trust Deed

We need to resolve this issue at once.

Regards,

Maverick Capital • 8080 North Central Expressway • Suite 1300 • D.B-31 • Dallas, Texas 75206-1895

19 JUL - 1996 10:45Z

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Subcommittee on Investigations

P.001

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PSIO01192

part of the world and whether or not including any one or more or all of the Trustees) of and for the purposes of any settlement administered and taking effect in any part of the world established for the benefit of such one or more of the Beneficiaries and so that upon any such transfer the property so transferred shall be held upon the trusts and with and subject to the powers and provisions declared and contained in the settlement to the trustees whereof the same is transferred (hereinafter called the "transferee settlement") freed and discharged from all the trusts powers and provisions of this Deed of Settlement PROVIDED ALWAYS that:

- (1) No such transfer shall be made if any member of the class of Excepted Persons shall be or may become capable of benefiting under the transferee settlement; and
- (2) In making such transfer due regard shall be had to any applicable rule against perpetuities.

8. Additional Powers of Trustees

- (1) The Trustees shall have power at their absolute discretion:
  - (a) to invest in the purchase of freehold or leasehold property or chattels for use or occupation or otherwise for enjoyment in specie

18-JUL-1996 16:52

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Subcommittee on Investigations

P.002

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by any Beneficiary upon such terms and conditions  
as the Trustees shall think fit and to enter into  
such compromises and arrangements with regard to  
or grant such charges options and other rights  
over the Trust Fund as they shall think fit.

- (b) to guarantee the liabilities and obligations of  
any Beneficiary and to pledge charge or otherwise  
deal with the Trust Fund or the income thereof or  
any part thereof respectively in support of any  
such guarantee.
- (c) to apply any part of the capital or income of the  
Trust Fund in effecting purchasing or otherwise  
acquiring and paying premiums on any policy or  
policies of assurance upon the life or lives of  
any person or persons whether such policies be  
whole life or endowment or policies to cover  
death within any term (howsoever short) or  
policies restricted to death by accident and  
generally upon any terms and conditions as the  
Trustees shall think fit and the Trustees shall  
have all the powers of an absolute beneficial  
owner as respects any policy forming part of the  
Trust Fund including the power to exercise any  
option afforded by such policy or to sell or  
realise any such policy or convert it into any  
other form of assurance.

19-JUL-1996 16:52

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P.003

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PSI001192

1018

Ms. Michelle Boucher,  
The Scottish Annuity Company (Cayman) Ltd.,  
Grand Cayman.

Fax to 00 1

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Subcommittee on Investigations

July ~~12~~<sup>13</sup>, 1996.

*ds*

'Noon Day Rest'

We need to receive written confirmation that the Committee of Protectors have considered the points raised in our fax of 19th July and that they continue to recommend that the Trustees should buy the above painting for £155,000 in order that we can settle with Sotheby's and arrange shipping and insurance.

*ys, l*

R. Buchanan,  
Director, Lorne House Trust Limited  
Trustee: The Bessie Trust.

CONFIDENTIAL  
PSI001174



1019

Ms. Michelle Boucher,  
The Scottish Annuity Company (Cayman) Ltd.,  
Grand Cayman.

Fax to 00 1

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Subcommittee on Investigations

July 23rd, 1996.

*Dr*

'Noon Day Rest'

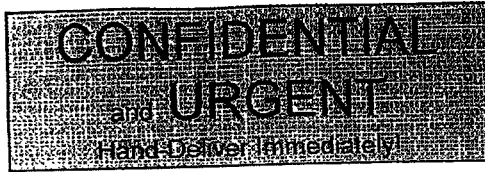
We are now holding funds on overnight deposit ready to buy the above painting as soon as we receive written confirmation that the Committee of Protectors have considered the points raised in our fax of 19th July and that they continue to recommend that the Trustees should buy the above painting for £155,000

*YSL*

R. Buchanan,  
Director, Lorne House Trust Limited  
Trustee: The Bessie Trust.

CONFIDENTIAL  
PSI0011744

1020



**FAX TRANSMITTAL**

**Maverick**

TO: **Ronald Buchanan**

FROM: **Mike French**

COMPANY: **Lorac House Trust**

PHONE: **214**

Redacted by the Permanent  
Subcommittee on Investigations

PHONE: **44 624**

Redacted by the Permanent  
Subcommittee on Investigations

FAX: **214**

FAX: **44 624**

DATE: **July 24, 1996**

NUMBER OF PAGES (including cover): **2**

TIME: **17:01 PM**

**COMMENTS:**

Please advise if this letter will be adequate for your purposes in connection with the proposed art purchase. If so, I will have it signed and forwarded.

Regards,

A handwritten signature in black ink, appearing to read "Mike French".

Maverick Capital • 8080 North Central Expressway • Suite 1300 • LB-31 • Dallas, Texas 75206-1895

24-JUL-1996 09:10

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Subcommittee on Investigations

P.001

**CONFIDENTIAL**  
**PSI001192**

July 24, 1996

Mr. Ronald Buchanan  
Lorne House Trust Limited  
Lorne House  
Castletown, Isle of Man  
British Isles

Re: The Bessie Trust

Dear Mr. Buchanan:

The undersigned is included as a beneficiary of the trust referred to above (the "Trust") and the spouse and issue of the undersigned are also included as such beneficiaries.

I have been advised that in connection with a proposed purchase of art by a corporation owned by the Trust, Lorne House as trustee of the Trust has inquired as to whether or not the beneficiaries of the trust have any foreseeable need for the funds necessary to purchase the art (approximately 155,000 GBP) or the income that could otherwise be earned on such funds in short-term US Treasury Bills.

This is to advise you that to my knowledge, neither I, nor my spouse nor any of my issue has any foreseeable need for such funds or any such income thereon.

Sam Wily

24-JUL-1996 22:52

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P.002

CONFIDENTIAL  
PSI001192



Michael C. French, Esq.,  
Maverick,  
8080 N. Central Expressway,  
Dallas,  
TX 75206.

July 25th, 1996.

Fax: 010 1

Redacted by the Permanent  
Subcommittee on Investigations

thank you for your overnight fax. Your proposed letter will do very well.

I am sorry if we appeared excessively obdurate on this matter but, as you know, the legal responsibilities of a trustee are more onerous than those of a banker or portfolio manager.

This subject will, as it happens, be considered at a seminar which is to be held in Castletown on Thursday, September 19th. We would welcome it if you could manage to attend, one week before we expect a return visit by you, Shari and Michelle.

A brochure for the seminar will be included with the copy of the Lorne House Report which we plan to mail from New York next week. The talk by Paul Moulton on offshore funds, their performance and charges might be of interest to you wearing your Maverick hat as he is the most respected analyst of such matters on this side of the Atlantic.

Regarding the painting, Sotheby's invoice includes a second painting, bought for £5,175 inclusive. Would the Committee of Protectors like Fugue Limited to buy this one also? It would simplify payment, delivery and insurance.



R. Buchanan.

CONFIDENTIAL  
PSI0011926

1023

Mr. Roger Bell,  
Sotheby's,  
34-35 New Bond Street,  
London W1A 2AA.

25th July, 1996.

**'Noon Day Rest' - Invoice Number LN64060018**

Further to our earlier telephone conversation, I hereby confirm that the above painting should be invoiced to **Fugue Limited** C/o Lorne House Trust Limited, Lorne House, Castletown, Isle of Man IM9 1AZ for the attention of Ronald Buchanan, Fax number 01624 822952.

Please be advised that we have instructed Bank of Bermuda (Isle of Man) to transfer £155,500.00 to your account with Barclays Bank, 160 Piccadilly, London for value tomorrow.



Barbara Wade.

CONFIDENTIAL  
PSI0011924



**THE TRUST COMMITTEE OF LORNE HOUSE TRUST LIMITED**

**TRUSTEES OF THE BESSIE TRUST**

**RESOLUTION IN WRITING**


We the undersigned, being all the members of the above-mentioned Committee, pursuant to the powers vested in us by the Articles of Association of Lorne House Trust Limited in its capacity as the Trustee of the above mentioned Trust, do hereby resolve:-

1. THAT the trust, in accordance with the wishes of the Committee of Trust Protectors, purchase the "Noon Day Rest" painting from Sotheby's at a cost of £155,500.00 and that it be delivered to at 8080 North Central Expressway, Suite 1300, Dallas, Texas.

Dated 29th July 1996

Committee Members

  
.....

  
.....

  
.....

  
.....



CONFIDENTIAL  
PSI0011754

1025



## Lorne House Trust Limited

Lorne House · · Castletown · · Isle of Man · · British Isles  
Telephone + 1624 823579 · Fax + 1624 822952

Mr M Williams  
Fritz Companies (UK) Limited  
Unit 14  
Saxonway Trading Estate  
Harmondsworth  
Middlesex UB7 0LW

31st July 1996

Fax to: 0181

Redacted by the Permanent  
Subcommittee on Investigations

Dear Mr Williams,

### 'Noon Day Rest'

Further to our telephone conversation, please find following an invoice from Sotheby's for the above mentioned painting.

The delivery address is c/o: Maverick Capital  
8080 North Central Expressway  
Suite 1300  
LB-31  
Dallas, Texas  
75206-1895

Please do not hesitate to call if you need any further information.

Yours sincerely,

Fiona Crellin

Internet: <http://www.lorne-house.com/>  
Email: [general@lorne-house.com](mailto:general@lorne-house.com)

Licensed to conduct Investment Business by the Isle of Man  
Financial Supervision Commission

Registered in Isle of Man No. 2056  
Telex No. 62926

A.J. Buchanan (Chairman) F.C.A. · R. Buchanan (Managing) · R.J. Collister · M.G. Gisborne F.C.A.  
A.F. Hohler · The Earl of Rosse (Ireland) · A.E. Wieler · J.K. Basnet (Nepal) (alternate) · S.F. Cairns (alternate)

CONFIDENTIAL  
PSI0011925

# Simcocks

PO BOX 181,  
50 ARIOL STREET,  
DOUGLAS,  
ISLE OF MAN,  
IM99 1PY.

ADVOCATES NOTARIES  
COMMISSIONERS FOR OATHS



Telephone 01624 620821 (Intl. +44 1624 620821) Fax: 01624 620994  
E-mail simcocks@enterprise.net CompuServe 101613,1315

R. Buchanan Esq.,  
Lorne House Trust Limited  
Lorne House  
CASTLETOWN

Date 20 November, 1996  
Your Ref  
Our Ref PJVD/EDS/233

Dear Ronnie,

ref: Purchase of a Painting

I refer to the above and to your letter of the 19<sup>th</sup> July 1996 enclosing a letter to Michelle Boucher of the Scottish Annuity Company (Cayman Limited).

I gave advice at that time and as I have not heard from you since, would consider it an appropriate time to enclose my account for remittance at your convenience.

Yours sincerely,

Paul J.V. Dougherty

Enc.





As of March 1, 2001

Personal & Confidential

Matthew G. Krane  
Attorney  
1451 North Kings Road  
Los Angeles, California 90069

RE: HAIM AND CHERYL SABAN, THE ALPHA FAMILY TRUST, SILVERLIGHT ENTERPRISES, L.P.

Dear Mr. Krane:

This Agreement sets forth the terms of your engagement of Quellos Financial Advisors, LLC ("QFA"), in furtherance of your legal representation of Haim and Cheryl Saban, The Alpha Family Trust ("Alpha") and Silverlight Enterprises, L.P., a California Limited Partnership ("Silverlight" and together with Mr. and Mrs. Saban and Alpha, the "Clients"), to provide advisory and consulting services in connection with a proposed sale or other disposition (a "Transaction") of all or a portion of the Clients' stock (the "Stock") in Fox Family Worldwide, Inc. ("FFWW"), including but not limited to a sale of the Stock to The News Corporation Limited, Fox Broadcasting Company or any of their affiliated companies. Such services shall include advice and recommendations relating to possible structures to implement a Transaction, including the restructuring and/or reorganization and/or complete or partial liquidation of various entities (including Silverlight and FFWW) owned by the Clients, the creation of one or more new entities to facilitate a Transaction, and financial planning relating to a Transaction, including the possible monetization of the Stock or other liquidity enhancement event in advance of a Transaction. Fees for our services (inclusive of expenses discussed below) shall be as set forth on Exhibit "A" hereto (the "Fees"). The Fees shall be paid from the proceeds of any Transaction, and the Clients agree that they will execute such letters of instruction or other documents reasonably requested by QFA to effect the payment of the Fees out of the proceeds of a Transaction, including but not limited to payment instructions given to any purchaser of the Stock in a Transaction or to a financial institution designated by QFA. Notwithstanding the foregoing, in the event an affiliate of QFA renders any investment advisory or portfolio management services in connection with a monetization of the Stock or liquidity enhancement event, the Fees set forth on Exhibit A hereto shall not include compensation for such services, and the Clients and such affiliate of QFA shall enter into a separate Investment Management Agreement with

Permanent Subcommittee on Investigations

EXHIBIT #45a

KS-00001062

respect to those services and shall in good faith agree upon such additional compensation. You and the Clients acknowledge that certain principals of QFA hold ownership interests in Euron International, Inc, which is providing certain services in connection with the Transaction. QFA represents and warrants that such ownership interests constitute in the aggregate less than three percent (3%) of the total ownership interests thereof. You and the Clients understand and consent to this relationship.

You and the Clients understand and agree that QFA will give you and the Clients the benefit of its best judgment and efforts in rendering services hereunder, but that none of QFA, its affiliates nor any of their officers, directors employees, agents or advisors shall be liable for any action taken, omitted or suffered to be taken by it in its reasonable judgement, in good faith and believed to be authorized or within the discretion or rights or powers conferred by this Agreement, or in accordance with (or in the absence of) specific directions or instructions from you or the Clients, provided, however, that such acts or omissions shall not have resulted from such person's willful misconduct, bad faith or gross negligence in its actions under this Agreement or breach of its duties or of its obligations hereunder. Furthermore, the aggregate liability of such person shall in no event exceed the Fees received by QFA hereunder nor include any special, consequential, incidental or exemplary damages or loss (nor any lost profits, savings or business opportunity). These terms will apply regardless of the nature of any claim asserted (including in contract or equity or by statute, and regardless of the standard of care or liability alleged, and whether or not any such person was advised of the possibility of the damage or loss asserted), but shall not apply to the extent finally determined to be contrary to any applicable law. Such terms will continue to apply after any termination of this Agreement and during any dispute between the parties.

You have informed us that, in addition to yourself, the Clients intend to engage the law firm of Bryan Cave LLP (the "Law Firm") to give legal advice and render legal services with respect to any proposals or recommendations submitted by QFA as part of QFA's services hereunder. QFA agrees to work closely with you and the Law Firm in carrying out its services hereunder, including consulting with you and the Law Firm on a regular and frequent basis, keeping you and the Law Firm apprised of QFA's progress hereunder, and submitting for your and the Law Firm's review and counsel any proposals QFA recommends should be presented to the Clients. QFA acknowledges that you may engage other accountants and financial advisors to provide services to you in your representation of the Clients in connection with a Transaction and that such services may substantially overlap the services to be performed by QFA hereunder, and QFA agrees to work in consultation with such other advisors but only to the extent specifically directed by you or the Law Firm, and you acknowledge that QFA may engage other advisors in connection with the services performed by it hereunder (all such other advisors, collectively, "Additional Advisors"). The Clients shall be responsible for all compensation (including fees and expenses) payable to its Additional Advisors, but only if directly engaged in writing by you on behalf of the Clients, and shall have the sole right to determine the amount of such compensation (which may be a percentage of the proceeds payable to the Clients from a Transaction), and QFA shall be responsible for all compensation (including fees and expenses) payable to its Additional Advisors, but only if directly engaged in writing by QFA, and shall have the sole right to determine the amount of such compensation (which may be a percentage of the Fees

KS-00001063

payable to QFA hereunder), and neither the Clients nor QFA shall have any liability for the compensation, fees or expenses of any Additional Advisor engaged by the other; provided that, notwithstanding the foregoing, QFA agrees to pay the professional fees and expenses of the Law Firm.

The Clients agree to indemnify QFA, its affiliates and each of their officers, directors employees, agents or advisors (each an "Indemnitee") against any and all losses, claims, damages or liabilities, joint or several, including, without limitation, reasonable attorney's fees and disbursements, resulting in any way from the performance or non-performance of any Indemnitee's duties hereunder incurred in defense or disposition of any action, suit or other proceeding, before any court or administrative or investigative body, in which such Indemnitee may be or may have been involved as a party or otherwise or with which Indemnitee may be or may have been threatened while acting in any capacity pursuant to this Agreement, except those resulting from gross negligence, willful misfeasance or violation of applicable law in the performance of such Indemnitee's obligations and duties, and, in the case of criminal proceedings, unless such Indemnitee had reasonable cause to believe its actions unlawful. QFA agrees to indemnify the Clients, their affiliates and each of their officers, directors employees, agents or advisors against any and all losses, claims, damages or liabilities, joint or several, including, without limitation, reasonable attorney's fees and disbursements, resulting in any way from any breach or asserted breach of any of QFA's duties or obligations under this Agreement.

You and the Clients and QFA agree that all information and advice provided by either party to the other shall be treated as confidential and shall not be disclosed to any third party (other than Additional Advisors) except as required by law, pursuant to a regulatory request, or as necessary in connection with the services provided to you or the Clients pursuant to this Agreement, provided that, nothing herein shall be construed to impose any purported obligation on you or the Clients to keep confidential any information or advice relating to the tax consequences of any Transaction or any proposal or recommendation made by QFA pursuant to the performance of its services hereunder.

The Clients (if applicable) and QFA each represents and warrants that it is duly organized, validly existing and in good standing under the laws of its State of organization and has full power and authority to execute and deliver this Agreement and carry out its obligations hereunder, the execution and delivery of this Agreement has been duly authorized by all necessary action on its behalf; the execution, delivery, and performance of this Agreement does not violate any agreement or arrangement to which it is a party or by which it is bound, or any order or decree to which it is subject; and this Agreement constitutes the valid and binding agreement of each of the parties hereto.

This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements, communications, representations or understandings between the parties relating to the subject matter hereof. This Agreement may be amended only by written agreement signed by all parties.

KS-00001064

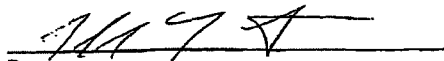
This Agreement shall inure to the benefit of and shall be binding upon each of the parties' successors and assigns, including without limitation any transferee to which any of the Stock is transferred prior to a Transaction (whether pursuant to a recommendation of QFA or otherwise), and the Clients agree that they will cause any such transferee of the Stock to acknowledge in writing that it is subject to the terms of this Agreement, including without limitation, liability for the payment of the Fees; provided however, that neither this Agreement nor any provision hereof shall in any way be construed as a "Lien" on the Stock, as such term is defined in that certain Strategic Stockholders Agreement dated as of August 1, 1997 by and among the shareholders of FFWW.

This Agreement shall be construed in accordance with the laws of the State of Delaware (without regard to principles of conflicts of law).


To confirm our engagement, please sign and have the Clients sign both copies of this and return a copy to me. Please keep the second copy for your and the Clients' records. If you have any questions about this letter, or our engagement generally, please feel free to contact me at (206) 613-6700.

Sincerely,

Quellos Financial Advisors, LLC


  
By JEFF GREENSTEIN

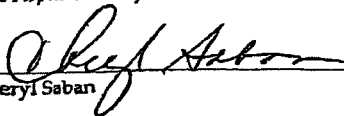
Agreed to and accepted:

  
Matthew G. Krane, attorney

[SIGNATURES CONTINUED ON NEXT PAGE]


KS-00001065

  
\_\_\_\_\_  
Haim Saban, individually and as Trustee of  
The Alpha Family Trust

  
\_\_\_\_\_  
Cheryl Saban

Silverlight Enterprises, L.P., a California Limited Partnership

By: ~~Glass Wave Enterprises, L.P.~~, its general partner

  
\_\_\_\_\_  
By: Haim Saban, its general partner

## EXHIBIT A

The Fees hereunder shall be an amount equal to Three and One Quarter Percent (3.25%) of the aggregate Gross Sales Proceeds, as defined herein, with respect to all Transactions. "Gross Sales Proceeds" with respect to any Transaction means the gross amounts to be received by the Clients or on the Clients' behalf in consideration of their Stock pursuant to a binding agreement entered into by Client(s) setting forth the terms of such Transaction, whether such amounts are to be paid in cash or in kind, with out deduction for any costs incurred by the Clients or on their behalf, *provided that*, for the purpose of determining the Fees, in no event shall the aggregate Gross Sales Proceeds with respect to all Transactions exceed \$1,490,000,000 (the "Maximum Proceeds Amount").

In the event a binding agreement is entered into by the Clients setting forth the terms of a Transaction, and for any reason such Transaction is not consummated pursuant to those terms, the Gross Sales Proceeds with respect to any subsequent Transaction that provides for the sale or disposition of the Stock that was to be sold or disposed of in the prior Transaction shall not be less than the Gross Sales Proceeds determined with respect to such prior Transaction.

All Fees shall be paid in cash no later than the consummation of the Transaction to which the Fees relate.

In the event any binding agreement setting forth the terms of a Transaction provides for the receipt by the Clients of property other than cash in consideration of their Stock, the gross amount to be received by the Clients for such Stock consisting of such property shall, for the purpose of determining the Fees, be the fair market value of such property at the time the Transaction is consummated, unless such Transaction is not consummated or the agreement setting forth the terms of such Transaction is amended or otherwise modified to eliminate all or part of such property as consideration for the Stock, in which case, such gross amount shall be the fair market value of the property at the time the binding agreement was entered into. The parties shall seek in good faith to agree on the fair market value of any property to be taken into account in determining the Gross Sales Proceeds hereunder. In the event the parties are unable to agree on the fair market value of any such property, such fair market value shall be determined by appraisal proceedings, which may be instituted by either the Clients or QFA giving notice to the other of their or its selection of an independent qualified appraiser for such purpose. The Client(s) collectively shall be entitled to one appraiser who shall act on behalf of all Client(s) who determine to institute an appraisal procedure. The party receiving such notice shall within ten (10) days of its receipt notify the other party of its selection of an independent qualified appraiser. The two appraisers so selected shall meet for the purpose of selecting a third independent qualified appraiser (the "Appraiser") and shall notify each of the parties of their selection within thirty (30) days after the second appraiser's appointment. Within ten (10) days of receipt of such notice, the Clients and QFA shall each deliver to the Appraiser their and its respective statement of the fair market value of the property in question along with instructions to the Appraiser to decide which statement of fair market value so delivered is closest to the fair market value of the subject property at the time such value is to be determined.

for purposes of determining the Gross Sales Proceeds hereunder. In the event the party receiving the initial notice of the selection of an appraiser by the other party does not notify such other party of its selection of an appraiser within the ten-day period provided for such notification, the appraiser set forth in the initial notice shall for all purposes of this Agreement be the Appraiser, and the parties shall deliver to the Appraiser their statements of fair market value and instructions within ten (10) days after the expiration of the first-mentioned ten-day period. The Appraiser shall not disclose to either party the statement of fair market value delivered by the other party until the Appraiser has received both such statements, unless only one party delivers a timely statement of fair market value, in which case the Appraiser shall immediately notify the parties of the amount set forth in such statement and such amount shall conclusively be determined to be the fair market value of the subject property for purposes of determining the Gross Sales Proceeds hereunder. Otherwise, the Appraiser shall notify the parties of his or her decision within 20 (twenty) days after receipt by him or her of both statements, and the fair market value set forth in the statement chosen by the Appraiser shall conclusively be determined to be the fair market value of the subject property for purposes of determining the Gross Sales Proceeds hereunder.



September 21, 2001

Personal & Confidential

Matthew G. Krane  
Attorney  
1451 North Kings Road  
Los Angeles, California 90069

RE: HAIM AND CHERYL SABAN, THE ALPHA FAMILY TRUST, SILVERLIGHT ENTERPRISES, L.P.

Dear Mr. Krane:

Reference is made to the agreement (the "Agreement") dated as of March 1, 2001 by and among you and the Clients, on the one hand, and QFA, on the other hand, relating to certain services to be rendered by QFA to you in furtherance of your representation of the Clients in connection with the possible sale or other disposition of the Stock. You have informed QFA that the Clients have entered into a binding agreement with The Walt Disney Company ("Disney") for the sale to Disney of all of the Stock (the "Disney Sale"). This letter confirms the application to the Disney Sale of the terms and provisions of the Agreement as provided herein. Except as otherwise defined herein, all capitalized terms used herein shall have the meaning ascribed to them in the Agreement. All of the terms and provisions of the Agreement remain in full force and effect.

You and the Clients acknowledge and agree that the Disney Sale is a Transaction, as such term is defined in the Agreement, and that the Fees set forth in Exhibit "A" of the Agreement shall be due and payable on the earlier to occur of: (i) the closing of the Disney Sale, in which case the Fees shall be payable from the proceeds of the Disney Sale in accordance with a Letter of Instruction from the Clients to HSBC Bank USA, in the form attached hereto as Attachment A, or (ii) the consummation of any other Transaction.

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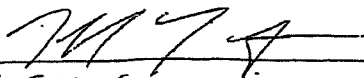
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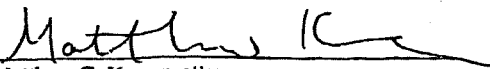
You, the Clients and QFA agree that the Gross Sales Proceeds with respect to the Disney Sale are in excess of the Maximum Proceeds Amount, and therefore the Fees payable under the Agreement shall be equal to Three and One-Quarter Percent (3.25%) of the Maximum Proceeds Amount, regardless of whether the Disney Sale is consummated.

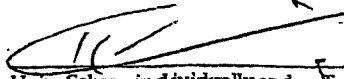
Sincerely,

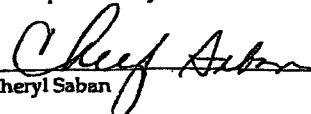
Quellos Financial Advisors, LLC

  
By JEFF GREENSTEIN

Agreed to and accepted:

  
Matthew G. Krane, attorney

  
Haim Saban, individually and as Trustee of  
The Alpha Family Trust

  
Cheryl Saban

Silverlight Enterprises, L.P., a California Limited Partnership

By: Glass Wave Enterprises, L.P., its general partner

By:   
Haim Saban, its general partner

KS-00001070

QUELLOS FINANCIAL ADVISORS, LLC  
601 UNION STREET  
56<sup>TH</sup> FLOOR  
SEATTLE, WASHINGTON 98101

October 24, 2001

Matthew G. Krane  
Attorney  
1451 North Kings Road  
Los Angeles, California 90069

RE: HAIM AND CHERYL SABAN, THE ALPHA FAMILY TRUST,  
SILVERLIGHT ENTERPRISES, L.P.

Dear Mr. Krane:

Reference is made to the letter agreement dated as of March 1, 2001 from Quellos Financial Advisors, LLC ("QFA") to you acting on behalf of the clients named therein (the "Clients"), as clarified by letter dated September 21, 2001 (collectively, the "Engagement Letter"). You, the Clients and QFA hereby amend the Engagement Letter as follows:

Notwithstanding anything to the contrary in the Engagement Letter or any other agreement or document, the Fees, as defined in the Engagement Letter, shall be equal to the sum of \$46,312,500.

Each of the parties hereto acknowledges that it has received good and valuable consideration for the amendment to the Engagement Letter set forth herein. All of the remaining terms and conditions of the Engagement Letter shall remain in full force and effect. This amendment may be executed in two or more counterparts, each of which shall be deemed an original, and such counterparts so executed shall be deemed to be one and the same instrument.

Yours very truly,


QUELLOS FINANCIAL ADVISORS, LLC

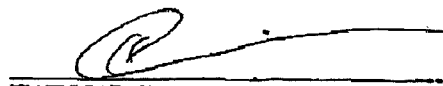
By: Bryan K. White

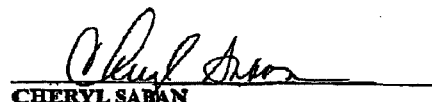
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Agreed and Accepted:

  
MATTHEW G. KRANE, ATTORNEY

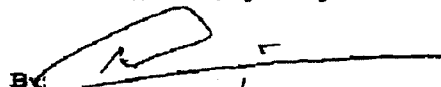
  
HAIM SABAN, AS TRUSTEE OF  
THE ALPHA FAMILY TRUST U/D/T  
DATED MAY 5, 1997

  
HAIM SABAN

  
CHERYL SABAN

**SILVERLIGHT ENTERPRISES, L.P., A  
CALIFORNIA LIMITED PARTNERSHIP**

By: 5161 Corporation, its general partner

By:   
Haim Saban, President

# EURAM BANK

Member of the European American Investment Group

Mr M G Krane  
Attorney  
1451 North Kings Road  
Los Angeles, California 90069

May 1, 2001

Dear Mr. Krane

This letter sets out the terms and conditions upon which you have engaged European American Investment Bank AG and its affiliates, as appropriate ("Euram Bank"), in furtherance of your legal representation of Haim and Cheryl Saban, the Alpha Family Trust and Silverlight Enterprises, L.P., a California Limited Partnership (collectively the "Clients"), to act as a financial adviser with respect to a possible sale by the Clients of their 49.5% interest in Fox Family Worldwide Inc, a privately held company incorporated under the laws of the State of Delaware (the "Company"), hereinafter referred to as the "Engagement".

## 1. SCOPE OF THE ENGAGEMENT

As part of the Engagement Euram Bank will, if appropriate and if requested:

- (a) advise you in the review of any vendor's report prepared by the Company of the business, operations, financial condition, strategic plans and prospects of the Company, with particular emphasis on the European aspects thereof;
- (b) assist you in the due diligence phase of the sale, again with particular reference to the European assets and operations of the Company;
- (c) be available at your request to meet with the Clients or the Company's board of directors and officers to discuss the provision of such assistance and generally be available to you and the Clients with respect to the proposed sale of the Company; and
- (d) advise you generally regarding the Clients' interests with respect to any of the foregoing.

## 2. INFORMATION

In connection with Euram Bank's engagement, you will furnish Euram Bank with all information concerning the Clients and the Company which Euram Bank reasonably deems appropriate and will provide Euram Bank with reasonable access to the Company and its directors, officers, employees, accountants and advisers, it being understood that Euram Bank will rely entirely upon such information provided by the Clients and the Company and its directors, officers, employees, accountants and advisers, without assuming any responsibility for independent investigation or verification thereof.

Permanent Subcommittee on Investigations

**EXHIBIT #45b**

**KS-00001074**

The Clients warrant and undertake to Euram Bank in respect of all information supplied by you that you, the Clients and the Company have obtained any such information other than by lawful means and that disclosure to Euram Bank will not breach any agreement or duty of confidentiality owed to third parties.

All non-public information concerning the Clients and the Company which is given to Euram Bank will be used solely in the course of the performance of Euram Bank's services hereunder and will be treated confidentially by Euram Bank for as long as it otherwise remains non-public. Except as otherwise required by law or any regulatory authority, Euram Bank will not disclose this information to a third party without the Clients' consent.

### 3. FEES AND EXPENSES

In consideration of Euram Bank providing its services under this agreement, the Clients shall pay Euram Bank an advisory fee (the "Advisory Fee") equal to seventy-seven one hundredths of one per cent (0,77%) of the gross sale price not in excess of one billion U.S. dollars (US\$ 1,000,000,000) agreed to be paid by a purchaser for the Clients' interest in the Company. The Advisory Fee shall be paid by the Clients to Euram Bank in its entirety following any agreement to purchase the Clients' interest in the Company and upon such time as you reasonably consider that the Engagement has come to an end and that Euram Bank's availability to provide further services hereunder is no longer required, but in no event later than the unconditional completion of the sale of the Company. You and the Clients hereby acknowledge, however, that such cessation of the Engagement may occur prior to the unconditional completion of the sale of the Company and that the payment of the Advisory Fee shall not be dependent upon or linked to such eventuality.

In addition, Euram Bank will be reimbursed on a monthly basis for its out-of-pocket expenses necessarily incurred in connection with this Engagement, and to the extent independently verified, including the fees and expenses plus VAT of its legal counsel, if any, and any other adviser retained by Euram Bank with your prior approval.

All amounts payable hereunder shall be net of any deductions, taxes or withholdings.

### 4. EURAM BANK'S ADVICE

Any opinion, valuation or advice, whether formal or informal, written or oral, provided by Euram Bank in connection with this engagement unless stated otherwise is exclusively for the information of you and the Clients and, except as required by applicable law or any regulatory authority, may not be disclosed, in whole or in part (other than to directors, officers, employees and advisers of the Company who are directly concerned with the proposed sale of the Company and whose knowledge of such information is essential for this purpose), nor summarised, excerpted from or otherwise publicly referred to without Euram Bank's prior written consent. In addition, Euram Bank may not be otherwise publicly referred to by you, the Client or the Company in connection with this Engagement without Euram Bank's prior written consent.

Please note that (a) the Clients must rely on the expertise of their specialist legal, accounting and tax advisers in relation to legal, regulatory, accounting or taxation matters and (b) the Clients will remain solely responsible for the commercial

assumptions on which any valuation advice provided by Euram Bank is based and for the underlying business decision to effect any transaction recommended by, or arising out of, the Engagement

Euram Bank has established "Chinese Wall" procedures and an independence policy designed to ensure that in providing corporate finance services to any particular client, the individuals at Euram Bank concerned are influenced only by the interests of that client and are insulated from individuals working in other divisions. You and the Clients accept that Euram Bank will address potential conflicts of interests and duties through its "Chinese Wall" procedures and independence policy and that such potential conflicts will not be disclosed to you or the Clients.

#### 5. INDEMNITY

Since Euram Bank will be acting on your behalf in furtherance of your legal representation of the Clients in connection with the Engagement hereunder, the Clients will indemnify each Euram Bank and any affiliate thereof (each an "Indemnified Person") from and against, and hereby agrees that an Indemnified Person shall have no liability to you or the Clients or any of your or their affiliates, associated companies, security holders or creditors for, any losses, claims, damages, charges or liabilities relating to or arising out of the Engagement, except to the extent that any such loss, claim, damage, charge or liability has been finally judicially determined by a court of competent jurisdiction to have resulted primarily from the recklessness or bad faith of such Indemnified Person in performing the services pursuant to the Engagement.

#### 6. TERMINATION

Euram Bank's engagement hereunder may be terminated at any time with or without cause by the you or Euram Bank upon ten days' written notice thereof to the other party, provided, however, that any termination of Euram Bank's engagement hereunder shall not affect the Clients' obligation to pay the Advisory Fee and any other fees earned and expenses incurred prior to such termination as provided above, or to indemnify Euram Bank and certain related persons and entities as provided above.

#### 7. VARIATION, GOVERNING LAW AND SUBMISSION TO JURISDICTION

In connection with this engagement, Euram Bank is acting as an independent contractor with duties owing solely to you. This agreement may not be amended or modified except in writing by Euram Bank, you and the Clients and shall be governed by and construed in accordance with the laws of the State of California. Any dispute arising out of or in connection with this agreement shall be subject to the exclusive jurisdiction of the California courts to whose jurisdiction you, the Clients and Euram Bank irrevocably submit.

**KS-00001076**

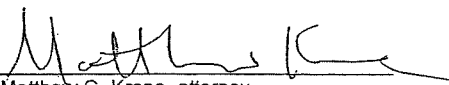
We are delighted to accept this engagement and look forward to working with you on this assignment. Please confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed duplicate of this agreement.

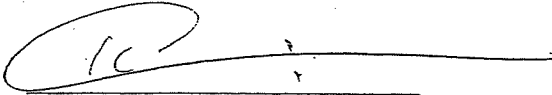
Yours faithfully,

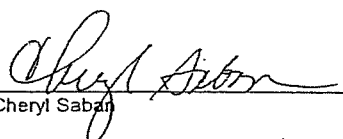
EUROPEAN AMERICAN INVESTMENT BANK AG

By: 

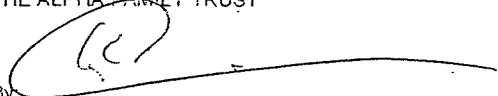
Accepted and agreed to  
as of the date first written above:

  
Matthew G. Krane, attorney

  
Haim Saban

  
Cheryl Saban

THE ALPHA FAMILY TRUST

  
By: \_\_\_\_\_  
Haim Saban, Trustee

KS-00001077

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-5-

SILVERLIGHT ENTERPRISES, L.P.

By: Glass Wave Enterprises, L.P.  
its general partner

A handwritten signature in black ink, appearing to be 'Haim Saban', written over a horizontal line.

By: \_\_\_\_\_  
Haim Saban, its general partner

**KS-00001078**



INVESTMENT ADVISORY AGREEMENT

This Investment Advisory Agreement (the "*Agreement*") is made as of September \_\_, 2001 between Titanium Trading Partners LLC, a Delaware limited liability company (the "*Client*") and Quellos Custom Strategies, LLC (the "*Investment Adviser*"), a Delaware limited liability company.

In consideration of the mutual promises and agreements herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed by and between the parties hereto as follows:

1. Actions of Client

Client has taken the following actions:

(a) Transferred and assigned to HSBC Bank USA, as custodian (the "*Custodian*"), the assets, consisting of securities (the "*Basket*"), derivatives and other assets described in Schedule A attached hereto, as Schedule A may be amended from time to time, and the income or proceeds from the investment of such assets (the "*Account*");

(b) Authorized and directed Custodian to maintain a separate account for and to segregate the assets of the Account subject to the management of Investment Adviser; and

(c) Authorized and directed Custodian to invest and reinvest the assets of the Account in accordance with instructions received by Custodian from Investment Adviser.

2. Appointment of Investment Adviser. Client hereby appoints Quellos Customer Strategies, LLC as Investment Adviser with respect to the Account. Investment Adviser hereby agrees to provide Client with investment management services with respect to the securities and other assets held from time to time in the Account.

3. Discretionary Authority.

(a) The Investment Adviser shall have full power and discretion to invest and reinvest the assets of the Account, without prior consultation or approval of Client. This authority shall include the power to buy, sell, exchange, convert, and otherwise trade in any and all publicly and privately traded stocks, bonds, options and other derivative instruments, and any other securities as the Investment Adviser may deem advisable and in the best interests of the Client and to execute agreements in the Client's name necessary to effect over-the-counter securities transactions or effect all forms of borrowings and or leverage (such agreements may include, but are not limited to, International Swap Dealers Association (ISDA) Master Agreements,

Permanent Subcommittee on Investigations

EXHIBIT #45c

KS-00001080

Bond Market Association (BMA) Master Agreements, and International Securities Lending Agreements).

(b) Client directs that Investment Adviser execute all brokerage transactions relating to the Account through Client's brokerage account with HSBC Bank USA, or an affiliate thereof. Client acknowledges and agrees that such transactions will not be executed on a "best execution" basis and may result in higher execution costs than would otherwise be the case, and that Investment Adviser shall have no responsibility for determining "best execution" with respect to such transactions;

(c) Except as otherwise provided in this Agreement, Investment Adviser shall have full discretionary authority (i) to determine which securities are to be bought or sold, (ii) to determine the manner in which securities are to be bought or sold and (iii) to execute for the Account such transactions as Investment Adviser deems necessary or desirable without the necessity of first obtaining the consent of Client or Custodian before such transactions are effected.

(d) Client hereby authorizes Investment Adviser to give written instructions to Custodian at any time and from time to time during the term hereof to deliver securities sold, exchanged or otherwise disposed of from the Account, upon receipt of payment for such securities, and to pay cash for such securities delivered to Custodian upon acquisition for the Account; provided, however, that this authorization shall not be deemed or construed to include authority to deliver or pay securities or cash to Investment Adviser.

(e) Client has authorized and directed Custodian to make payments and deliver securities from the Account to such persons in such manner, and in such amounts, as Investment Adviser shall instruct.

(f) Client agrees to furnish and will require Custodian to furnish such authorizations as brokers or Investment Adviser may from time to time request to implement the provisions of sub-paragraph (a) of this Paragraph 3. The Investment Adviser shall not be responsible for any loss incurred by reason of any act or omission on the part of the Custodian.

(g) Client hereby authorizes Investment Adviser, in Investment Adviser's discretion, to vote, consent, waive, ratify or take other actions with respect to proxies, exchange offers, tender offers, restructurings, amendments to indentures or other agreements, or other proposed transactions relating to the assets of the Account (collectively, to "Vote"); provided however, that, if shares of Fox Family Worldwide, Inc. are included in the Account at any time, Client shall have the exclusive authority to Vote with respect to such shares.

(h) Investment Adviser is authorized to comply with any written or oral instructions from Client or Client's representative.

4. Fees and Expenses. The compensation of the Investment Adviser for its services rendered hereunder shall be calculated and paid in accordance with

KS-00001081

Schedule B. All expenses of any sort or kind related to the Account including, but not limited to, any costs of safekeeping, transport, acquisition and disposition, such as brokerage and other execution costs, custody fees and margin costs, shall be paid by the Client. To the extent that such fee is not paid by the Client, it shall be payable from the assets of the Account; provided, however, that Client agrees to require the Custodian to send to Client a statement at least quarterly indicating all amounts disbursed from the Account, including the amount of fees paid directly to Investment Adviser hereunder. Client acknowledges that Client shall verify the accuracy of the fee calculation and is not relying on the Custodian for such confirmation.

5. Certain Conflicts of Interest.

(a) The Investment Adviser and its affiliates may have other investment advisory clients and investment vehicles and will seek to allocate investment opportunities and dispositions fairly over time among all clients or vehicles.

(b) Broker-Dealer or other financial institution counterparties of transactions entered into on behalf of Client by the Investment Adviser may include counterparties for which the Investment Adviser or its affiliates or their partners, members, shareholders or affiliates (i) have ownership or other financial interests; or (ii) have business relationships, including but not limited to lending, depository, risk management, investment advisory, security distribution or banking. These relationships may result in conflicts of interest as between Investment Adviser and Client. In addition, the Investment Adviser or an affiliate of the Investment Adviser may receive compensation from third parties counterparties to securities, derivative or other transactions in connection with introductions of Client to such third parties. Client understands and agrees to these relationships.

6. Account Reports. The Investment Adviser shall prepare a monthly report summarizing the Account activity, and deliver this report to the Client within 10 business days of each month end.

7. Services to Other Clients. The Client understands and agrees that the Investment Adviser and its affiliates perform investment advisory and investment management services for various clients other than the Client. The Client agrees that the Investment Adviser and its respective affiliates may give advice and take action in the performance of its duties with respect to any of its other clients which may differ or be the same as advice given, or the timing or nature of action taken, with respect to the Account. Nothing in this Agreement shall be deemed to impose upon the Investment Adviser any obligation to purchase or sell or to recommend for purchase or sale for the Account any security or other property which the Investment Adviser its principals, affiliates, agents or employees may purchase or sell for its or their own accounts or for the account of any other clients.

8. Liability. Investment Adviser shall not be liable for any action taken, omitted or suffered to be taken by it in its reasonable judgement, in good faith and

KS-00001082

believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement, or in accordance with (or in the absence of) specific directions or instructions from the Client or Client's representative; provided, however, that such acts or omissions shall not have resulted from the Investment Adviser's wilful misconduct, bad faith or gross negligence in its actions under this Agreement or breach of its duties or of its obligations hereunder.

Client shall indemnify the Investment Adviser and its members, partners, affiliates, employees, representatives, and agents (each an "*Indemnified Person*") against any and all losses, claims, damages or liabilities, joint or several, including, without limitation, reasonable attorney's fees and disbursements, resulting in any way from the performance or non-performance of the Investment Adviser's duties hereunder incurred in defense or disposition of any action, suit or other proceeding, before any court or administrative or investigative body, in which such Indemnified Person may be or may have been involved as a party or otherwise or with which Indemnified Person may be or may have been threatened while acting in any capacity pursuant to this Agreement, except those resulting from gross negligence, willful malfeasance or violation of applicable law in the performance of the Investment Adviser's obligations and duties, and, in the case of criminal proceedings, unless such Indemnified Person had reasonable cause to believe its actions unlawful.

Notwithstanding the foregoing, nothing herein shall in any way constitute a waiver or limitation of any rights that Client may have under any federal securities laws.

9. Termination. This Agreement may be terminated by either the Client or the Investment Adviser by giving the other party written notice of at least 30 days, and shall terminate automatically without such notice upon the payment of all Performance Fees (as defined in Schedule B hereto) due to Investment Adviser and liquidation of the assets of the Account.

10. Notices. Any notice, instruction, request, consent, demand or other communication required or contemplated by this Agreement, other than routine transactions, shall be in writing and shall be deemed delivered or received if given, made or communicated by United States registered or certified mail, return receipt requested, addressed as follows:

If to Client: Titanium Trading Partners, LLC  
10960 Wilshire Boulevard  
Suite #2233  
Los Angeles, California 90024  
Attention: Sharon Sellstrom

If to Investment Adviser:  
Quellos Custom Strategies, LLC  
601 Union Street, 56<sup>th</sup> Floor  
Seattle, WA 98101  
Attention: Jeffrey I. Greenstein

KS-00001083

If to Custodian: HSBC Bank USA  
 452 Fifth Avenue  
 New York, New York 10018  
 Attn: Mary A. Pan, Senior Vice President

provided that each party shall, by written notice, promptly inform the other party of any change of address. Copies of all non-routine correspondence shall also be sent to the General Counsel of Investment Adviser at the above address.

11. Representations by Client and Investment Adviser.

(a) Client and Investment Adviser each represents and warrants that the terms hereof do not violate any obligation by which it is bound, whether arising by contract, operation of law, or otherwise. Client (if applicable) and Investment Adviser each represents and warrants that it is duly organized, validly existing and in good standing under the laws of its State of organization and has full power and authority to execute and deliver this Agreement and carry out its obligations hereunder, the execution and delivery of the Agreement has been duly authorized by all necessary action on its behalf; the execution, delivery, and performance of this Agreement does not violate any agreement or arrangement to which it is a party or by which it is bound, or any order or decree to which it is subject; and this Agreement constitutes the valid and binding agreement.

(b) Client represents and warrants that (i) the assets of the Account do not constitute assets of (x) an employee benefit plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 ("ERISA")), whether or not subject to Title I of ERISA, (y) a plan described in Section 4975(e)(1) of the Internal Revenue Code, or an entity whose underlying assets are assets of a plan described in (x) or (y) by reason of such plan's investment in the entity; (ii) Client is not relying on funds managed hereunder to meet Client's liquidity needs, including needs to meet cash obligations and (iii) Client is excluded from the provisions of Section 205(a)(1) of the Advisers Act of 1940, as amended (the "Advisers Act") because Client is a "Qualified Purchaser" as defined under the Investment Company Act of 1940, as amended, and the rule promulgated thereunder.

(c) Client represents and warrants that (i) Client is in compliance with, and covenants that Client will in the future comply with (x) all applicable money laundering laws or regulations, and (y) all applicable tax laws and regulations; and (ii) Client is not subject to any sanction imposed by the Office of Foreign Assets Control.

(d) Client agrees to immediately notify the Investment Adviser of any changes that may occur in any of the above representations and warranties.

(e) Client represents and warrants that it has read carefully and understands this Agreement (including all related Schedules) and has consulted its own attorney, accountant or investment advisor with respect to the investments contemplated by this Agreement and the suitability for such investments.

KS-00001084

12. Form ADV; Privacy Policy. Client acknowledges receipt of Investment Adviser's Disclosure Statement, as required by Rule 204-3 under the Advisers Act (the "Disclosure Statement"). In the event Client received the Disclosure Statement less than 48 hours prior to, but no later than, the date of execution of this Agreement, Client shall have the option to terminate this Agreement without penalty within five business days after the date of execution; provided, however, that any investment action taken by Investment Adviser with respect to the Account prior to the effective date of such termination shall be at Client's risk. Client also acknowledges receipt of Quellos Group's Notice of Privacy Policy.

13. Confidential Relationship. The parties agree that all information and advice provided by either party to the other or the Client shall be treated as confidential and shall not be disclosed to third parties except as required by law or as necessary in connection with regular portfolio transactions for the Account.

14. Amendment and Assignment. This Agreement may not be amended without the prior written consent of the parties, and may not be assigned (as defined in the Advisers Act) without the prior written consent of the other party.

15. Waivers. A waiver by any party of a breach of any provision of this Agreement shall not constitute a waiver of any subsequent breach of such provision or of any other provision hereof. Failure of a party to enforce at any time or from time to time any provision of this Agreement shall not be construed as a waiver thereof.

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KS-00001085

16. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Delaware (without regard to principles of conflicts of law) to the extent not preempted by applicable Federal law.

IN WITNESS WHEREOF, Client and Investment Adviser have caused this Agreement to be executed by their proper signatures as of the day and year first written above.

INVESTMENT ADVISER:

Quellos Custom Strategies, LLC

By: [Signature]  
Title: CEO

By: \_\_\_\_\_  
Title: \_\_\_\_\_

CLIENT:

Titanium Trading Partners LLC

By: Titanium Acquisition Corp., its general partner

By: [Signature]  
Title: \_\_\_\_\_

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SCHEDULE A

ASSETS OF THE ACCOUNT

Equity Basket

Company	Ticker	Shares	Purchase Price	Purchase Value
Adobe Systems Incorporated	ADBE	1,728,000	\$25.3018	\$43,721,510
Automatic Data Processing, Inc.	ADP	1,733,000	\$46.5344	\$80,644,115
Applied Materials, Inc.	AMAT	700,000	\$29.6057	\$20,723,990
AOL Time Warner Inc.	AOL	2,649,485	\$32.5715	\$86,297,701
Biogen, Inc.	BGEN	953,516	\$53.1584	\$50,687,385
Clear Channel Communications, Inc.	CCU	973,596	\$38.7761	\$37,752,256
Cisco Systems, Inc.	CSCO	2,000,000	\$12.5506	\$25,101,200
Dell Computer Corporation	DELL	2,238,000	\$18.6051	\$41,638,214
eBay Inc.	EBAY	3,181,462	\$46.6758	\$148,497,284
Intel Corporation	INTC	1,150,000	\$21.4840	\$24,706,600
Microsoft Corporation	MSFT	745,500	\$52.1351	\$38,866,717
Nokia Corporation	NOK	900,000	\$16.8658	\$15,179,220
Oracle Corporation	ORCL	900,000	\$12.3191	\$11,087,190
Sprint PCS Group	PCS	1,756,000	\$25.2670	\$44,368,852
Qwest Communications International, Inc.	Q	2,339,181	\$19.9605	\$46,691,222
QUALCOMM Incorporated	QCOM	575,000	\$47.2022	\$27,141,265
Xilinx, Inc.	XLNX	1,000,000	\$25.7564	\$25,756,400
<b>TOTAL</b>				<b>\$768,861,121</b>

Collar

Collar Transaction on Equity Basket	
Strike Price of Put (100% Floor Price)	\$768,861,121
Strike Price of Call (108% Cap Price)	\$830,370,011

Other Assets

KS-00001087



SCHEDULE B  
FFFS

Upon the final liquidation of the assets (as defined in the initial Schedule A to this Agreement) of the Account (other than cash or cash equivalents) (the "Final Liquidation"), Investment Adviser shall be paid a performance fee (the "Performance Fee") equal to seventeen percent (17%) of the excess, if any, of the "Final Liquidation Value," over the "Floor Value" both as defined below, as of the date of the Final Liquidation (the "Final Liquidation Date"). In the event assets are withdrawn from the Account prior to the Final Liquidation Date and prior to payment to Investment Adviser of its Performance Fee, the Investment Adviser shall be paid a Performance Fee calculated as provided in the preceding sentence and based upon the Final Liquidation Value as of such withdrawal date, and the Floor Value shall then be increased to equal the Final Liquidation Value used in calculating such interim Performance Fee (an "Interim Performance Fee Calculation") less the value of such withdrawn assets.. Any subsequent Performance Fee shall be calculated based on the excess, if any, of the Final Liquidation Value of the Account as of the relevant Performance Fee calculation date over the Floor Value as of the most recent Interim Performance Fee Calculation. Any losses incurred by the Account subsequent to the payment of a Performance Fee shall be recouped prior to the payment of any subsequent Performance Fee; provided however, the Investment Adviser shall in no event be required to refund any Performance Fee. In the event this Agreement is terminated prior to the Final Liquidation Date, an Interim Performance Fee Calculation shall be made as of the date of such termination and Investment Adviser shall be paid a Performance Fee based on such Interim Performance Fee Calculation.

"Floor Value" shall initially mean the value of the Basket on the date of acquisition of Client by Titanium Acquisition Corp. and Cheryl Saban. Floor Value shall thereafter be adjusted in accordance with the preceding paragraph as a result of any Interim Performance Fee Calculation.

"Final Liquidation Value" shall mean the value of the Basket as of the Final Liquidation Date, plus or minus the value of the Collar listed in Schedule A hereto (the Collar') on the Final Liquidation Date. Final Liquidation Value shall be adjusted in accordance with the second preceding paragraph as a result of any Interim Performance Fee Calculation.

The value of the Basket on any date shall be the aggregate value of the securities contained in the Basket on such date. The per share value on any date of any security in the Basket listed on the Nasdaq NMS shall be the last traded price quoted by such exchange on such date without regard to extended or after hours trading. The per share value on any date of any security in the Basket listed on the New York Stock Exchange shall be the closing price quoted by such exchange on such date. The value of any other assets of the Account shall be determined in good faith by the Investment Adviser, including by reference to proprietary models.

KS-00001088



QUADRA FINANCIAL GROUP, L.P.  
RELATIONSHIP AGREEMENT

This Relationship Agreement (the "Agreement") is entered into on this 1st day of July, 2000, by and between Robert W. Johnson, IV (the "Client"), and Quadra Financial Group, L.P., a Delaware limited partnership ("Quadra").

In consideration of the mutual agreements herein contained, Client and Quadra agree as follows:

1. Relationship With Quadra. The purpose of this Agreement is to establish a broad-based relationship between Client and Quadra that provides Client access to Quadra and its affiliated entities (each a "Member" of the "Quadra Group") and general consulting relating to investments, asset allocation, risk management, financial, estate and tax planning and other services. When the services requested entail the provision of investment advice or tax consulting, such advice will be provided pursuant to paragraph 2 or paragraph 3 below, as appropriate. In the event Client requests any Member of the Quadra Group to provide investment advice with respect to specific portfolios or assets, execute recommended transactions or investments or similar dedicated services, Client and the appropriate Member of the Quadra Group shall enter into a separate agreement describing the scope of such services and the associated fees.

2. Investment Advisors. Consulting services relating to general investment advice will be provided by Quadra Capital Management, L.P. ("QCM"), an investment adviser registered under the Investment Adviser's Act of 1940, as amended (the "Act"). Consulting services for investment advice which includes consideration of tax strategies or consequences will be provided by Quadra Custom Strategies, LLC ("QCS"), an investment adviser registered under the Act. For the purpose of providing investment advice, QCM or QCS, as applicable, shall be deemed a party to this Agreement.

3. Tax Consulting. Tax consulting will be provided by Quadra Associates, LLC ("QA"), and for purposes of providing such services, QA shall be deemed a party to this Agreement. The scope of the services provided pursuant to this Agreement shall not in any circumstance be deemed to include the provision by any Member of the Quadra Group to the Client of any federal, state or local tax advice which could be viewed as the provision of legal advice and Client hereby confirms that Client will not rely upon any Member of the Quadra Group to provide such advice with respect to any transaction or investment discussed between Client and any Member of the Quadra Group if Client determines to undertake such transaction or make such investment.

4. Fees. The compensation of Quadra for its services rendered hereunder shall be calculated and paid in accordance with Exhibit A.

5. Services to Other Clients. The Client understands and agrees that the various Members of the Quadra Group perform a variety of services, including investment advisory and investment management services, financial, estate and tax

Relationship Agreement

Quadra Financial Group, L.P.

Permanent Subcommittee on Investigations

EXHIBIT #46

PSI-RWJ 000234

Group may give advice and take action in the performance of their duties with respect to any of their other clients, which may differ or be the same as advice given to Client. Nothing in this Agreement shall be deemed to impose upon any Member of the Quadra Group any obligation to recommend for purchase or sale any security or other property which such Member, its principals, affiliates, agents or employees may purchase or sell for its own accounts or for the accounts of any other clients or to provide Client consulting services, recommendations or other advice that may be provided to other clients.

6. Certain Conflicts of Interest. Counterparties of transactions recommended to Client by Members of the Quadra Group may include counterparties for which Members of the Quadra Group or their partners, members, shareholders or affiliates (i) have ownership or other financial interests (i.e., Pali Capital and European American Investment Bank); or (ii) have business relationships, including but not limited to lending, depository, risk management, investment advisory, security distribution or banking relationships (i.e., Bank of America and UBS AG and their affiliates and other financial institutions with which Quadra may do business in the future). These relationships may result in conflicts of interest as between Quadra and Client. Client understands and agrees to these relationships.

7. Liability. No Member of the Quadra Group nor any Member's officers, directors, members, employees, or agents shall be liable for any action taken by it, omitted or suffered to be taken by it in its reasonable judgement, in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement, or in accordance with (or in the absence of) specific directions or instructions from the Client or Client's representative; provided, however, that such acts or omissions shall not have resulted from such Member's wilful misconduct, bad faith or gross negligence in its actions taken under this Agreement or breach of its duties or obligations hereunder. As it relates to investment advice, notwithstanding the foregoing, nothing herein shall in any way constitute a waiver or limitation of any rights that Client may have under federal securities laws.

The Client shall indemnify each Member of the Quadra Group and the members, partners, affiliates, employees, representatives, and agents of such Member (each an "Indemnified Person") against any and all losses, claims, damages or liabilities, joint or several, including, without limitation, reasonable attorney's fees and disbursements, resulting in any way from the performance or non-performance of the duties of any Member of the Quadra Group hereunder, except those resulting from gross negligence, willful malfeasance or violation of applicable law in the performance of such Member's obligations and duties, and, in the case of criminal proceedings, unless such Indemnified Person had reasonable cause to believe its actions unlawful.

8. Termination. This Agreement shall terminate on the two year anniversary from the date of this Agreement, or if earlier, on 30 days written notice by one party to the other party. Client recognizes that the Quadra Group, in the course of providing its services, incurs substantial resources and up-front costs to build a comprehensive knowledge base of Client's overall financial affairs and for developing and implementing investment strategies which will be tailored to the meet the Client's

investments, asset allocation, risk management, financial, estate and tax planning and other objectives. As such, if Client terminates this Agreement prior to the two year anniversary of the Agreement, Client shall pay Quadra an Early Termination Fee. The Early Termination Fee will be calculated as set forth in Exhibit B.

9. Representations by the Client and Quadra. Client and Quadra Group each represents that the terms hereof do not violate any obligation by which it is bound, whether arising by contract, operation of law, or otherwise. Client (if applicable) and the Quadra Group each represents that it is duly organized, validly existing and in good standing under the laws of its state of organization and has full power and authority to execute and deliver this Agreement and carry out its obligations hereunder, the execution and delivery of the Agreement has been duly authorized by all necessary action on its behalf; the execution, delivery, and performance of this Agreement does not violate any agreement or arrangement to which it is a party or by which it is bound, or any order or decree to which it is subject; and this Agreement constitutes the valid and binding agreement.

10. Confidential Relationship. The parties agree that all information and advice provided by either party to the other shall be treated as confidential and shall not be disclosed to third parties except as required by law or in connection with regular portfolio transactions of Client.

11. Amendment and Assignment. This Agreement may not be amended without the prior written consent of the parties, and may not be assigned without the prior written consent of the other party. In the event of a succession or assignment on the part of either party to this Agreement, and absent written consent by both parties to the contrary, this Agreement will survive and be binding upon any successor to or assignee of the original parties to this Agreement. QCM agrees to notify Client of any change in the membership of QCM within a reasonable time after such change.

12. Waivers. A waiver by any party of a breach of any provision of this Agreement shall not constitute a waiver of any subsequent breach of such provision or of any other provision hereof. Failure of a party to enforce at any time or from time to time any provision of this Agreement shall not be construed as a waiver thereof.

13. Attorneys' Fees. The prevailing party in any action brought by either party hereto to enforce its rights under this Agreement shall be entitled to recover all costs and expenses (including reasonable attorneys' fees) incurred in prosecuting or defending such action.

14. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Delaware (without regard to principles of conflicts of law) to the extent not preempted by applicable Federal law.

15. Compliance. Client represents and warrants that (a) Client is in compliance with, and covenants that Client will in the future comply with (i) all applicable money laundering laws or regulations, and (ii) all applicable tax laws and regulations; (b) Client is not subject to any sanction imposed by the Office of Foreign

Assets Control; and (c) (i) that the assets of Client that may be considered in connection with the investment advisory services to be provided pursuant this Agreement do not constitute assets of (x) an employee benefit plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 ("ERISA")), whether or not subject to Title I of ERISA, (y) a plan described in Section 4975(e)(1) of the Internal Revenue Code, or (z) an entity whose underlying assets are assets of a plan described in (x) or (y) by reason of such plan's investment in the entity.

The parties hereto have hereunto caused this Agreement to be duly executed the day and year first hereinbefore written.

Quadra Financial Group, L.P.  
by: Quadra Holdings Group, Inc., as general partner

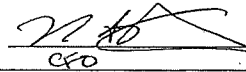
By:  \_\_\_\_\_

Title: CEO  
Address: 601 Union St., 56<sup>th</sup> Floor  
Seattle, WA 98101

With respect to Investment Advisory or Tax Consulting Services:

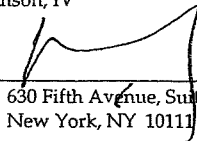
Quadra Custom Strategies, LLC.  
Quadra Capital Management, L.P.  
Quadra Associates, LLC.

by: Quadra Holdings Group, Inc., as general partner or managing member respectively.

By:  \_\_\_\_\_

Title: CEO  
Address: 601 Union St., 56<sup>th</sup> Floor  
Seattle, WA 98101

Client:  
Robert W. Johnson, IV

By:  \_\_\_\_\_

Address: 630 Fifth Avenue, Suite 1510  
New York, NY 10111

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**EXHIBIT A**  
**FEES**

In connection with the consulting and risk management services for which it has been retained, the Investment Advisor shall be compensated in an amount equal to \$120,800 per month over the next 24 months. Such amount, payable monthly, shall be paid within 30 days of end of each calendar month.

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EXHIBIT B  
EARLY TERMINATION FEE

In the event that this Agreement is terminated by the Client prior to the two year anniversary of this Agreement, an Early Termination Fee will be immediately due and payable by the Client to Quadra. The Early Termination Fee shall be the product of: (a) twenty-four less the number of monthly payments received by Quadra pursuant to Exhibit A; and (b) the monthly fee as calculated in Exhibit A.

**Titanium Trading Partners LLC**  
*Daily Report as of November 13, 2001*

**Final Consolidated Profitability - 11/13/01<sup>1</sup>**

Initial Equity Portfolio Value	\$ 768,861,121
Current Equity Portfolio Value	<u>898,788,285</u>
Estimated Gain/(Loss) on Equity Portfolio	\$ 129,927,084
Initial Collar Cost	(31,523,396)
Estimated Current Collar Value	<u>(85,256,327)</u>
Estimated Gain/(Loss) on Collar	(116,739,623)
Total Investment Gain/(Loss)	13,187,461
Loan Fee <sup>1</sup>	(1,000,000)
Structuring Fee <sup>2</sup>	(7,888,611)
Interest Expense <sup>3</sup>	<u>(2,651,667)</u>
Estimated Total Net Gain/(Loss)	<u>\$ 1,827,183</u>
Estimated Total Net Gain/(Loss) as a Percentage of Costs <sup>4</sup>	4.263%
Implied Annualized Return	35.63%

<sup>1</sup> Refers to the \$800 million loan extended to Silverlight Enterprises, L.P. by HSBC Bank U.S.A.

<sup>2</sup> Included in the aggregate purchase price paid by Titanium Acquisition Corp. and C. Saban for their respective interests in Titanium Trading Partners LLC.

<sup>3</sup> Loan was paid off as of October 24th, 2001 and interest expense accrued through that date.

<sup>4</sup> Costs include initial collar cost, loan fee, structuring fee, and estimated interest expense.

<sup>5</sup> Based on indicative unwind pricing provided by HSBC Bank U.S.A.

**Equity Portfolio Composition**

Company	Ticker	Shares	Purchase Price	Purchase Amount	Final Price	Final FMV	Final Gain/(Loss)
Adobe Systems Incorporated	ADBE	1,728,000	25.3018	\$ 43,721,510	29.1018	\$ 50,287,954	\$ 6,566,443
Automatic Data Processing, Inc.	ADP	1,733,000	46.5344	\$ 80,644,115	54.5109	\$ 94,467,390	\$ 13,823,275
Applied Materials, Inc.	AMAT	700,000	29.6057	\$ 20,723,990	39.1421	\$ 27,399,670	\$ 6,675,680
AOL Time Warner Inc.	AOL	2,649,485	32.5715	\$ 86,297,701	36.6564	\$ 97,120,582	\$ 10,822,881
Biogen, Inc.	BGEN	953,516	53.1884	\$ 50,687,385	54.7890	\$ 52,238,326	\$ 1,550,941
Clear Channel Communications, Inc.	CCU	973,596	38.7761	\$ 37,752,256	42.9005	\$ 41,767,731	\$ 4,015,475
Cisco Systems, Inc.	CSCO	2,000,000	12.5506	\$ 25,101,200	19.2940	\$ 38,588,000	\$ 13,486,800
Dell Computer Corporation	DELL	2,238,000	18.6051	\$ 41,638,214	25.8064	\$ 57,754,779	\$ 16,116,565
eBay, Inc.	EBAY	3,181,462	46.6758	\$ 148,497,284	57.6830	\$ 183,516,353	\$ 35,019,068
Intel Corporation	INTC	1,150,000	21.4840	\$ 24,706,600	28.5689	\$ 32,854,206	\$ 8,147,606
Microsoft Corporation	MSFT	745,500	52.1351	\$ 38,866,717	66.0669	\$ 49,252,837	\$ 10,386,120
Nokia Corporation	NOK	900,000	16.8658	\$ 15,179,220	22.4935	\$ 20,244,173	\$ 5,064,953
Oracle Corporation	ORCL	900,000	12.3191	\$ 11,087,190	15.2832	\$ 13,754,858	\$ 2,667,668
Sprint PCS Group	PCS	1,756,000	25.2670	\$ 44,368,852	24.4889	\$ 43,002,508	\$ (1,366,344)
Qwest Communications International, Inc.	Q	2,339,181	19.9605	\$ 46,691,222	11.5568	\$ 27,033,388	\$ (19,657,834)
QUALCOMM Incorporated	QCOM	578,000	47.2022	\$ 27,141,265	56.1004	\$ 32,357,701	\$ 5,216,436
Xilinx, Inc.	XLNX	1,000,000	25.7564	\$ 25,756,400	37.2480	\$ 37,247,950	\$ 11,491,550
<b>Total</b>				<b>\$ 768,861,121</b>		<b>\$ 898,788,285</b>	<b>\$ 129,927,084</b>
Basket Gain/(Loss) Since Inception:						16.99%	

Confidential

**Permanent Subcommittee on Investigations**  
**EXHIBIT #47a**

Quellos Custom Strategies, LLC

**PSI-QUEL 26588**



# Titanium Trading Partners LLC Daily Report as of November 13, 2001

## Final Consolidated Profitability - 11/13/01<sup>5</sup>

Initial Equity Portfolio Value	\$ (768,861,121)	
Current Equity Portfolio Value	898,788,205	
Estimated Gain/(Loss) on Equity Portfolio	\$ 129,927,084	
Initial Collar Cost	(31,523,306)	
Estimated Current Collar Value	(85,236,317)	
Estimated Gain/(Loss) on Collar	(116,759,623)	
Total Investment Gain/(Loss)	13,167,461	
Loan Fee <sup>1</sup>	(1,000,000)	
Structuring Fee <sup>2</sup>	(7,688,611)	
Interest Expense <sup>3</sup>	(2,651,667)	
Estimated Total Net Gain/(Loss)	\$ 1,827,183	
Estimated Total Net Gain/(Loss) as a Percentage of Costs <sup>4</sup>	4.263%	
Implied Annualized Return	35.63%	

<sup>1</sup> Refers to the \$800 million loan extended to Silverlight Enterprises, L.P. by HSBC Bank U.S.A.

<sup>2</sup> Included in the aggregate purchase price paid by Titanium Acquisition Corp. and C. Saban for their respective interests in Titanium Trading Partners LLC.

<sup>3</sup> Loan was paid off as of October 24th, 2001 and interest expense accrued through that date.

<sup>4</sup> Costs include initial collar cost, loan fee, structuring fee, and estimated interest expense.

<sup>5</sup> Based on indicative unwind pricing provided by HSBC Bank U.S.A.

EXHIBIT A — *PORTFOLIO ANALYSIS*

Permanent Subcommittee on Investigations

**EXHIBIT #47b**

**KS-00001214**

**Titanium Trading Partners LLC**  
**Portfolio as of 9/24/01**

Stock	Shares	Date purchased	Basis per share	Basis	9/24/01 per sh.	9/24/01 Value	Bull-in gain (loss)
ADBE	1,728,000	June 6, 2000	57.8438	\$ 99,954,000	25.3018	\$ 43,721,510	\$ (56,232,490)
ADP	1,733,000	June 6, 2000	57.6875	\$ 99,972,438	46.5344	\$ 80,644,115	\$ (19,328,322)
AMAT	700,000	June 6, 2000	89.3125	\$ 62,518,750	29.6057	\$ 20,723,990	\$ (41,794,760)
AOL	1,000,000	January 3, 2000	82.7500	\$ 82,750,000	32.5715	\$ 32,571,500	\$ (50,178,500)
AOL	1,649,485	February 28, 2000	60.6250	\$ 100,000,028	32.5715	\$ 53,726,201	\$ (46,273,827)
BGEN	953,516	February 28, 2000	104.8750	\$ 99,999,991	53.1584	\$ 50,687,385	\$ (49,312,606)
CCU	973,596	January 3, 2000	87.7500	\$ 85,433,049	38.7761	\$ 37,752,256	\$ (47,680,793)
CSCO	2,000,000	September 21, 2001	12.5506	\$ 25,101,200	12.5506	\$ 25,101,200	\$ 0
DELL	2,238,000	June 6, 2000	44.6875	\$ 100,010,625	18.6051	\$ 41,638,214	\$ (58,372,411)
EBAY	250,000	February 28, 2000	72.5313	\$ 18,132,813	46.6758	\$ 11,668,950	\$ (6,463,863)
EBAY	1,393,000	June 6, 2000	71.8125	\$ 100,034,813	46.6758	\$ 65,019,389	\$ (35,015,423)
EBAY	1,538,462	December 28, 1999	69.9350	\$ 107,592,340	46.6758	\$ 71,808,945	\$ (35,783,395)
INTC	1,150,000	September 21, 2001	21.4840	\$ 24,706,600	21.4840	\$ 24,706,600	\$ 0
MSFT	745,500	September 21, 2001	52.1351	\$ 38,866,717	52.1351	\$ 38,866,717	\$ 0
NOK	900,000	June 6, 2000	55.6250	\$ 50,062,500	16.8658	\$ 15,179,220	\$ (34,883,280)
ORCL	900,000	June 6, 2000	38.5313	\$ 34,678,125	12.3191	\$ 11,087,190	\$ (23,590,935)
PCS	1,756,000	June 6, 2000	56.9375	\$ 99,982,250	25.2670	\$ 44,368,852	\$ (55,613,398)
Q	2,339,181	January 3, 2000	42.1200	\$ 98,526,304	19.9605	\$ 46,691,222	\$ (51,835,081)
QCOM	575,000	February 28, 2000	143.2500	\$ 82,368,750	47.2022	\$ 27,141,265	\$ (55,227,485)
XLNX	1,000,000	February 28, 2000	70.2500	\$ 70,250,000	25.7564	\$ 25,756,400	\$ (44,493,600)

\$ 1,480,941,291

\$ 768,861,121

\$ (712,080,170)

KS-00001215

11/12/01 shares sold	11/12/01 per share	11/12/01 amt realized	11/12/01 p/t basis	11/12/01 realized g/l	11/12/01 built-in loss
1,296,000	28.8805	\$ 37,429,128	\$ 74,965,500	\$ (37,536,372)	\$ (42,174,367)
1,299,750	54.5147	\$ 70,855,481	\$ 74,979,328	\$ (4,123,847)	\$ (14,496,242)
525,000	38.8496	\$ 20,396,040	\$ 46,889,063	\$ (26,493,023)	\$ (31,346,070)
750,000	36.4284	\$ 27,321,303	\$ 62,062,508	\$ (34,741,204)	\$ (37,633,880)
1,237,114	36.4284	\$ 45,066,080	\$ 75,000,031	\$ (29,933,950)	\$ (34,705,375)
715,137	54.6455	\$ 39,079,019	\$ 74,999,993	\$ (35,920,974)	\$ (36,984,454)
730,197	42.2173	\$ 30,826,946	\$ 64,074,787	\$ (33,247,841)	\$ (35,760,595)
1,500,000	19.1515	\$ 28,727,250	\$ 18,825,900	\$ 9,901,350	\$ -
1,678,500	25.6191	\$ 43,001,659	\$ 75,007,969	\$ (32,006,309)	\$ (43,779,308)
187,500	57.4647	\$ 10,774,629	\$ 13,599,607	\$ (2,824,978)	\$ (4,847,896)
1,044,750	57.4647	\$ 60,036,233	\$ 75,026,094	\$ (14,989,861)	\$ (26,261,562)
1,153,846	57.4647	\$ 66,305,429	\$ 80,694,238	\$ (14,388,809)	\$ (26,837,541)
862,500	28.4093	\$ 24,503,021	\$ 18,529,950	\$ 5,973,071	\$ -
559,125	65.8246	\$ 36,804,179	\$ 29,150,038	\$ 7,654,142	\$ -
675,000	22.3232	\$ 15,068,160	\$ 37,546,875	\$ (22,478,715)	\$ (26,162,460)
675,000	15.3539	\$ 10,363,883	\$ 26,008,594	\$ (15,644,711)	\$ (17,693,201)
1,317,000	24.4271	\$ 32,170,491	\$ 74,986,688	\$ (42,816,197)	\$ (41,710,049)
1,754,386	11.4590	\$ 20,103,509	\$ 73,894,738	\$ (53,791,229)	\$ (38,876,317)
431,250	55.8509	\$ 24,085,701	\$ 61,776,563	\$ (37,690,862)	\$ (41,420,614)
750,000	36.9344	\$ 27,700,800	\$ 52,687,500	\$ (24,986,700)	\$ (33,370,200)
		\$ 670,618,942	\$ 1,110,705,960	\$ (440,087,019)	\$ (534,060,130)

KS-00001216

Exhibit A

11/13/01 shares sold	11/13/01 per share	11/13/01 amt realized	11/13/01 p/r basis	11/13/01 realized g/l	11/13/01 built-in loss
432,000	29.7658	\$ 12,858,826	\$ 24,988,500	\$ (12,129,674)	\$ (14,056,122)
433,250	54.4995	\$ 23,611,908	\$ 24,993,109	\$ (1,381,201)	\$ (4,832,081)
175,000	40.0196	\$ 7,003,430	\$ 15,629,688	\$ (8,626,258)	\$ (10,448,690)
250,000	37.3404	\$ 9,335,096	\$ 20,687,492	\$ (11,352,396)	\$ (12,544,620)
412,371	37.3404	\$ 15,398,102	\$ 24,999,998	\$ (9,601,896)	\$ (11,568,432)
238,379	55.2033	\$ 13,159,307	\$ 24,999,998	\$ (11,840,690)	\$ (12,328,151)
243,399	44.9500	\$ 10,940,785	\$ 21,358,262	\$ (10,417,477)	\$ (11,920,198)
500,000	19.7215	\$ 9,860,750	\$ 6,275,300	\$ 3,585,450	\$ -
559,500	26.3684	\$ 14,753,120	\$ 25,002,656	\$ (10,249,536)	\$ (14,593,103)
62,500	58.3380	\$ 3,646,127	\$ 4,533,206	\$ (887,079)	\$ (1,615,967)
348,250	58.3380	\$ 20,316,221	\$ 25,008,719	\$ (4,692,498)	\$ (8,753,861)
384,616	58.3380	\$ 22,437,713	\$ 26,898,102	\$ (4,460,389)	\$ (8,945,854)
287,500	29.0476	\$ 8,351,185	\$ 6,176,650	\$ 2,174,535	\$ -
186,375	66.7936	\$ 12,448,657	\$ 9,716,679	\$ 2,731,978	\$ -
225,000	23.0045	\$ 5,176,013	\$ 12,515,625	\$ (7,339,613)	\$ (8,720,820)
225,000	15.0710	\$ 3,390,975	\$ 8,669,531	\$ (5,278,556)	\$ (5,897,734)
439,000	24.6743	\$ 10,832,018	\$ 24,995,563	\$ (14,163,545)	\$ (13,903,350)
584,795	11.8501	\$ 6,929,879	\$ 24,631,565	\$ (17,701,686)	\$ (12,958,765)
143,750	56.8487	\$ 8,172,001	\$ 20,592,188	\$ (12,420,187)	\$ (13,806,871)
250,000	38.1886	\$ 9,547,150	\$ 17,562,500	\$ (8,015,350)	\$ (11,123,400)
		\$ 228,169,263	\$ 370,235,330	\$ (142,066,067)	\$ (178,020,040)

KS-00001217

Total amt realized	Total realized g/l	LI/ST	Built-in>realized ?	TTP Losses	Contrib. Basis	Cont. Amt. Real.
\$ 50,287,954	\$ (49,666,046)	L	B	\$ (49,666,046)	\$ 99,954,000	\$ 50,287,954
\$ 94,467,390	\$ (5,505,048)	L	B	\$ (5,505,048)	\$ 99,972,438	\$ 94,467,390
\$ 27,399,470	\$ (35,119,280)	L	B	\$ (35,119,280)	\$ 62,518,750	\$ 27,399,470
\$ 36,656,400	\$ (46,093,600)	L	B	\$ (46,093,600)	\$ 82,750,000	\$ 36,656,400
\$ 60,464,182	\$ (39,535,846)	L	B	\$ (39,535,846)	\$ 100,000,028	\$ 60,464,182
\$ 52,238,326	\$ (47,761,664)	L	B	\$ (47,761,664)	\$ 99,999,991	\$ 52,238,326
\$ 41,767,731	\$ (43,665,318)	L	B	\$ (43,665,318)	\$ 85,433,049	\$ 41,767,731
\$ 38,588,000	\$ 13,486,800	S	NA	0	0	0
\$ 57,754,779	\$ (42,255,846)	L	B	\$ (42,255,846)	\$ 100,010,625	\$ 57,754,779.15
\$ 14,420,756	\$ (3,712,056)	L	B	\$ (3,712,056)	\$ 18,132,813	\$ 14,420,756
\$ 80,352,454	\$ (19,682,358)	L	B	\$ (19,682,358)	\$ 100,034,813	\$ 80,352,454
\$ 88,743,142	\$ (18,849,198)	L	B	\$ (18,849,198)	\$ 107,592,340	\$ 88,743,142
\$ 32,854,206	\$ 8,147,606	S	NA	0	0	0
\$ 49,252,837	\$ 10,386,120	S	NA	0	0	0
\$ 20,244,173	\$ (29,818,328)	L	B	\$ (29,818,328)	\$ 50,062,500	\$ 20,244,173
\$ 13,754,858	\$ (20,923,268)	L	B	\$ (20,923,268)	\$ 34,678,125	\$ 13,754,858
\$ 43,002,508	\$ (56,979,742)	L	R	\$ (56,979,742)	\$ 99,982,250	\$ 43,002,508
\$ 27,033,388	\$ (71,492,915)	L	R	\$ (71,492,915)	\$ 98,526,304	\$ 27,033,388
\$ 32,257,701	\$ (50,111,049)	L	B	\$ (50,111,049)	\$ 82,368,750	\$ 32,257,701
\$ 37,247,950	\$ (33,002,050)	L	B	\$ (33,002,050)	\$ 70,250,000	\$ 37,247,950
\$ 898,788,205	\$ (582,153,086)			\$ (614,173,612)	\$ 1,392,266,774	\$ 778,093,162

KS-00001218

EXHIBIT B — *COLLAR ANALYSIS*

Permanent Subcommittee on Investigations

**EXHIBIT #47c**

**KS-00001219**

**Titanium Trading Partners LLC**


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*Collar Analysis*

	<u>9/24/01</u> <u>Initial Cost</u>	<u>11/12/01</u> <u>Unwind</u>	<u>11/13/01</u> <u>Unwind</u>	<u>Total</u>
Put	(76,886,112)	7,960,898	2,130,379	(66,794,835)
Call	<u>45,362,806</u>	<u>(68,928,692)</u>	<u>(26,698,902)</u>	<u>(49,964,788)</u>
	(31,523,306)	<u>(60,967,794)</u>	<u>(24,268,523)</u>	<u>(116,759,623)</u>



**Robert W. Johnson, IV***Reka Limited Purchase Analysis*

On May 5, 2000 Robert W. Johnson, IV (the "Investor") will purchase Reka Limited ("Reka"). Currently, Reka holds the following portfolio of stocks (the "Portfolio"):

Ticker	Shares	Execution Price	5/5/00 Fair Market Value	YTD Return as of 5/5/00
VRSN	100,000	136.08	\$ 13,608,330	-27%
CMGI	250,000	64.70	16,175,250	-60%
ICGE	215,000	39.24	8,437,073	-81%
CNXT	125,000	51.23	6,404,075	-21%
CMRC	230,000	56.31	12,952,289	-45%
DCLK	200,000	62.03	12,405,600	-53%
YHOO	100,000	125.21	12,520,920	-47%
CTXS	300,000	44.85	13,453,980	-31%
ATHM	450,000	17.74	7,984,935	-59%
Total			<u>\$ 103,942,452</u>	

The substantial decline in the trading price of each of the stocks in the Portfolio over the first four months of the year due to an overall market downturn (see Exhibit A) coupled with a strong US economy and low inflation, presents a potential buying opportunity. We believe that the stock trading price of these particular companies have the potential to recover significantly over the next few years and this may be an opportune time to purchase Reka at what we believe is a considerable discount from its potential value.

In order to enhance its profits, Reka issued a 5-Year Warrant on the Portfolio with a strike level of 150% (the "Warrant"). The premium received from issuing the Warrant plus future earnings on that premium gives the Investors the opportunity to capture additional upside by purchasing Reka. Based on the recent volatility, we believe the Portfolio has the ability to increase in value in both the short and long term.

Barnville Limited and Claycroft Limited (the "Sellers") agree to sell Reka to the Investors and to provide seller financing to the investors on a recourse basis. Pursuant to the terms of the seller financing, the Investors will pledge their interest in Reka as collateral to guarantee future repayment of the purchase price for Reka. To protect against significant losses in the Portfolio, Reka may purchase a 100-day OTC Put Option with a 100% strike level on the underlying Portfolio.

Due to the current volatility of the Portfolio, purchasing an at-the-money put option will be relatively costly. To offset a portion of this expense, Reka may write an out-of-the-money 100-day Call Option on the Portfolio with a strike level at or above 110%. By entering into this collar (long put/short call) Reka (and the Investors) will mitigate their downside exposure on the Portfolio. In addition, the collar allows for some short-term upside potential up to the call strike level. After the expiration of the collar, the Portfolio is subject to full downside risk and, limited by the warrant, is subject to upside reward.

We believe that the volatility that is responsible for the substantial decline in the Portfolio's value is the same volatility that will allow it to make a quick and profitable recovery (see Exhibit B). Perhaps the most widely used measure of stock volatility is the *beta coefficient*. Using beta values for each stock in the Portfolio (see Exhibit C) shows that the chances for the Portfolio to outperform the market are quite high. The average Beta of the Portfolio for the year preceding the purchase of Reka (or since inception) relative to the S&P 500 Index is 2.0. Relative to the NASDAQ Composite Index, the average Beta is 1.6. In light of these factors, assuming strong market conditions subsequent to the purchase of Reka, we expect the Portfolio to outperform these markets anywhere from 60% to 100% thereby generating very attractive gains.

The Portfolio is currently at the low end of its trading range and has the ability to meet or beat the 50% growth expectation by the end of the five year period. Given the recent increase in the volatility of the underlying stocks reinforced by the relatively high beta coefficients and a depressed Portfolio value, we believe that the Portfolio value has the potential of reaching the warrant strike price prior to the maturity date of the warrant.

**Brian Hanson**

**From:** Brian Hanson  
**Sent:** Wednesday, March 13, 2002 12:34 PM  
**To:** 'anussbaum@proskauer.com'  
**Cc:** Andrew Robbins  
**Subject:** Reka



Point Strategy  
 Presentation.ppt...

Amanda,

Pursuant to your request of Andy Robbins, I am attaching the following narrative related to Mr. Johnson's investment in Reka Limited/I LLC.

In addition, here is a synopsis of the trade profitability:

Woodglen (refers to both Woodglen entities) purchased Reka for \$105,392,452 which included a \$1,450,000 purchase premium (the fee charged by Euram for facilitating the creation of Reka and the issuance of the long dated warrant etc.). Woodglen then put a collar around the securities the created a net debit of \$3,101,187 consisting of the purchase of a put for \$15,321,117 and sale of a call for \$12,219,930. The collar was closed out 31 days later by paying \$2,596,167 consisting of the purchase of the call for \$14,551,943 and the sale of the put for \$11,955,776. The portfolio was liquidated for \$112,276,243 generating a profit of \$8,333,791. The investment advisory fees associated with Quellos were paid separately by RWJTV pursuant to an investment advisory agreement spanning a 24 month period that requires the payment of \$120,000 per month. There was an additional \$20,000 that was paid by Reka. Using these figures one could argue that Reka generated a net profit of \$2,636,437 over the 31 day period not accounting for the fees of \$1,450,000 and the \$2,900,000.

If you have any questions regarding either document, please feel free to contact either Andy or myself. I can be reached directly at (206) 613-6732 and Andy can be reached at (212) 609-4185.

Regards,

Brian Hanson  
 Quellos Custom Strategies, LLC  
 Phone : (206) 613-6700  
 Fax : (206) 613-6713

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Permanent Subcommittee on Investigations

EXHIBIT #48b

PSI-QUEL 06807

**Robert W. Johnson, IV - Reka Limited**  
**Summary as of June 5, 2000 (Execution prices at close-out)**

Company	Ticker	Shares	Basis Price	Basis Amount	Initial Gain (Loss)	Purchase Price	Purchase Amount	Sale Price	Total Proceeds	Gain (Loss)
VeriSign	VRNS	100,000	246.06	24,606,250	(10,997,920)	136.08	13,608,330	179.10	17,909,640	4,301,310
Conexant Systems	CNXT	125,000	96.81	12,101,563	(5,697,486)	51.23	6,404,075	49.31	6,163,625	(240,450)
Internet Capital Group	ICGE	215,000	200.00	43,000,000	(34,562,927)	39.24	8,497,073	41.25	8,968,750	431,677
CMGI	CMGI	250,000	163.22	40,805,000	(24,639,750)	64.70	16,175,250	60.00	15,000,000	(1,175,250)
Commerce One	CMRC	230,000	125.00	28,750,000	(15,797,711)	56.31	12,952,289	54.52	12,538,588	(413,701)
Yahoo!	YHOO	100,000	237.50	23,750,000	(11,229,080)	125.21	12,520,920	138.07	13,807,030	1,286,110
Citrix Systems Inc.	CTXS	300,000	103.06	30,918,750	(17,464,700)	44.65	13,453,980	61.06	18,317,040	4,863,060
ATHome Corp.	ATHM	450,000	40.25	18,112,500	(10,127,565)	17.74	7,984,935	20.86	9,389,070	1,404,135
DoubleClick	DCLK	200,000	134.00	26,800,000	(13,394,400)	62.03	12,405,600	51.41	10,282,500	(2,123,100)
				<u>288,944,083</u>	<u>(144,901,611)</u>		<u>103,942,452</u>		<u>112,276,243</u>	<u>8,333,791</u>
							<u>185,914</u>			

**Estimated Consolidated P&L**

Stock sale proceeds	112,276,243
Trade value	(103,942,452)
Gain/(loss) on stock	8,333,791
Proceeds from sale of put	
Cost of long put	11,955,776
Gain/(loss) on put	(15,521,117)
	(3,565,342)
Cost of covering call	
Proceeds from short call	(14,551,943)
Gain/(loss) on call	12,219,930
	(2,332,013)
Total trading gain/(loss)	2,636,436
Prepaid interest	(3,469,718)
Investment advisory fees	(2,800,000)
Net gain/(loss)	(3,733,282)
Net loss as % of initial loss	2.58%

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**POINT - One Year Duration (Warrant Outstanding)**  
**One Year Profitability Analysis: Projected P&L**

Portfolio Cost Basis	\$ 248,844,063			
Portfolio Trade Price	\$ 109,915,452			
Approximate Initial Loss	\$ 144,900,000			
		Projected P&L (Stock Down 20%)	Projected P&L (Stock Flat)	Projected P&L (Stock Up 20%)
Stock sale proceeds	86,618,710			
Portfolio value on STV purchase date	(109,915,452)		109,915,452	124,790,942
Gain/(loss) on stock	(17,323,742)		(109,915,452)	(109,915,452)
Proceeds from sale of 100 day put				20,788,490
Cost of long 100 day put				
Gain/(loss) on 100 day put	(15,321,117)		(15,321,117)	(15,321,117)
Cost of covering 100 day call				
Proceeds from short 100 day call				
Gain/(loss) on 100 day call	12,219,930		12,219,930	12,219,930
Warrant premium				
Interest on warrant premium (7% / 12 months)	50,547,000		50,547,000	50,547,000
Gain/(loss) on warrant	3,539,290		3,539,290	3,539,290
Total trading gain/(loss)	31,660,361	54,085,290	50,984,103	71,772,593
Prepaid interest (includes 1% purchase premium)	(3,469,718)		(3,469,718)	(3,469,718)
Interest on bank loan used to settle seller financing (7% / 8.6 months)	(5,251,868)		(5,251,868)	(5,251,868)
Investment gain/(loss)	24,938,775		42,259,517	63,058,007
Quanta structuring & advisory fees	(2,900,000)		(2,900,000)	(2,900,000)
Net gain/(loss)	22,038,775	51,185,290	39,359,517	60,148,007
Return Analysis				
Periodic Return A - based on all costs (see assumption 4)	18.6%		33.2%	50.7%
Periodic Return B - based on initial cash requirements (see assumption 5)	232.7%		415.6%	635.1%

Assumptions:

1. The portfolio value fluctuates within the collar strike range for the first 100 days (i.e. both the short-term put option and short-term call option expire out-of-the-money)
2. The above scenarios reflect the long-term movement in the equity portfolio value with funds borrowed from another source
3. The denominator used in the Return Analysis - Periodic Return A includes the purchase price of the STV, the cost of the collar, prepaid interest, interest on the long-term bank loan, and structuring / advisory fees.
4. The denominator used in the Return Analysis - Periodic Return B includes the cost of the collar, prepaid interest, and structuring / advisory fees.
5. The warrant is still out-of-the-money.

POINT - One Year Duration (Warrant Hedged)  
One Year Profitability Analysis: Projected P&L

Portfolio Cost Basis	\$ 248,844,063		
Portfolio Value on SPV purchase date	109,942,452		
Approximate Initial Loss	\$ 144,901,611		
		Projected P&L (Stock Down 30%)	Projected P&L (Stock Up 30%)
Stock sale proceeds	86,685,710		124,720,942
Gain/(loss) on stock	(17,232,742)		20,788,490
Proceeds from sale of 100 day put			
Cost of long 100 day put	(15,321,117)	(15,321,117)	(15,321,117)
Gain/(loss) on 100 day put			
Cost of covering 100 day call			
Gain/(loss) on 100 day call	12,219,930	12,219,930	12,219,930
Warrant premium	50,547,000		50,547,000
Interest on warrant premium (7% / 12 months)	3,538,290		3,538,290
Cost of warrant hedge	(29,114,659)		(29,114,659)
Gain/(loss) on warrant	24,170,652	10,439,654	(4,517,464)
Total trading gain/(loss)	3,745,723	7,338,667	13,169,539
Prepaid interest (includes 1% purchase premium)	(3,469,718)	(3,469,718)	(3,469,718)
Interest on bank loan used to settle seller financing (7% / 8.6 months)	(5,254,869)	(5,254,869)	(5,254,869)
Investment gain/(loss)	(4,978,863)	(1,385,919)	4,462,233
Operating expenses & advisory fees	(2,500,000)	(2,500,000)	(2,500,000)
Net gain/(loss)	(7,678,863)	(4,395,919)	15,431,633
Return Analysis			
Periodic Return A - based on all costs (see assumption 4)	-4.6%	-3.6%	1.3%
Periodic Return B - based on initial cash requirement (see assumption 5)	-49.2%	-45.3%	16.3%

Assumptions:

1. The portfolio value fluctuates within the collar strike range for the first 100 days (i.e. both the short-term put option and short-term call option expire out-of-the-money)
2. The denominator used in the Return Analysis - Periodic Return A includes the purchase price of the SPV, the cost of the collar, prepaid interest, interest on the long-term bank loan, and structuring/advisory fee
3. The denominator used in the Return Analysis - Periodic Return B includes the cost of the collar, prepaid interest, and structuring/advisory fee
4. The warrant is still outstanding
5. The warrant has been hedged by purchasing a 4 year, 120 spot warrant in the market.

POINT - Five Year Duration (Warrant Outstanding)  
3 Year Profitability Analysis: Projected P&L

Portfolio Cost Basis	\$ 248,844,063			
Portfolio Trade Price	103,944,452			
Approximate Initial Loss	144,901,611			
		Projected P&L (Stock Down 80%)	Projected P&L (Stock Up 80%)	
Stock sale proceeds	69,294,968			
Portfolio value on 30V purchase date	(103,944,452)	103,944,452	135,913,678	
Gain/(loss) on stock	(34,647,484)	(103,944,452)	(103,944,452)	51,971,226
Proceeds from sale of 100 day put				
Cost of long 100 day put	(15,321,117)	(15,321,117)	(15,321,117)	(15,321,117)
Gain/(loss) on 100 day put				
Cost of covering 100 day call				
Proceeds from short 100 day call	12,219,930	12,219,930	12,219,930	12,219,930
Gain/(loss) on 100 day call				
Warrant premium	50,547,000	50,547,000	50,547,000	
Interest on warrant premium (7% / 60 months)	17,691,450	17,691,450	17,691,450	
Gain/(loss) on warrant	68,238,450	68,238,450		68,238,450
Total trading gain/(loss)	30,489,779	65,137,263		117,108,489
Prepaid interest (includes 1% purchase premium)	(3,469,718)	(3,469,718)		(3,469,718)
Interest on bank loan used to settle seller financing (7% / 56.6 months)	(34,359,753)	(34,359,753)		(34,359,753)
Investment gain/(loss)	(7,338,691)	27,308,790		79,989,016
Quanta structuring & advisory fees	(2,900,000)	(2,900,000)		(2,900,000)
Net gain/(loss)	(10,239,664)	24,468,790		76,390,016
Return Analysis				
Periodic Return A - based on all costs (see assumption 4)	-4.9%			51.7%
Periodic Return B - based on initial cash requirements (see assumption 5)	-108.1%			886.5%

Assumptions: 1. The portfolio value fluctuates within the 100 day collar strike range (i.e. both the short-term put option and short-term call option expire out-of-the-money)

2. The above scenarios reflect the long-term movement in the equity portfolio value with funds borrowed from another source

3. The denominator used in the Return Analysis - Periodic Return A includes the purchase price of the cost of the call option, prepaid interest, interest on the long-term bank loan, and structuring/advisory fees.

4. The denominator used in the Return Analysis - Periodic Return B includes the cost of the collar, prepaid interest, and structuring/advisory fees

## Robert W. Johnson, IV - Reka Limited

Summary as of June 5, 2000 (Execution prices at close-out)

Company	Ticker	Shares	Basis Price	Basis Amount	Initial Gain (Loss)	Purchase Price	Purchase Amount	Sale Price	Total Proceeds	Gain (Loss)
Veridigm	VRSN	100,000	246.06	24,606,250	(10,997,920)	136.08	13,608,330	179.10	17,909,640	4,301,310
Conexant Systems	CNXT	125,000	96.81	12,101,563	(5,697,488)	51.23	6,404,075	49.31	6,163,625	(240,450)
Internet Capital Group	ICGE	215,000	200.00	43,000,000	(34,562,927)	39.24	8,437,073	41.25	8,868,750	431,677
CMGI	CMGI	250,000	163.22	40,805,000	(24,629,750)	64.70	16,175,250	60.00	15,000,000	(1,175,250)
Commerce One	CMRC	230,000	125.00	28,750,000	(15,797,711)	56.31	12,952,289	54.52	12,538,588	(413,701)
Yahoo!	YHOO	100,000	237.50	23,750,000	(11,229,080)	125.21	12,520,320	138.07	13,807,030	1,286,710
Citrix Systems Inc.	CTXS	300,000	103.06	30,918,750	(17,464,770)	44.85	13,453,980	61.06	18,317,040	4,863,060
AtHome Corp.	ATHM	450,000	40.25	18,112,500	(10,127,565)	17.74	7,984,935	20.86	9,389,070	1,404,135
DoubleClick	DCLK	200,000	134.00	26,800,000	(14,394,400)	62.03	12,405,600	51.41	10,282,500	(2,123,100)
				<u>249,844,063</u>	<u>(144,901,611)</u>		<u>103,942,652</u>		<u>112,276,243</u>	<u>8,333,791</u>

## Estimated Consolidated P&amp;L

Stock sale proceeds	112,276,243	
Trade value	<u>(103,942,652)</u>	8,333,791
Gain/(loss) on stock		
Proceeds from sale of put	11,955,776	
Cost of long put	<u>(15,321,117)</u>	
Gain/(loss) on put		(3,365,342)
Cost of covering call	(14,551,943)	
Proceeds from short call	<u>12,219,590</u>	
Gain/(loss) on call		(2,332,013)
Total trading gain/(loss)		2,636,436
Prepaid interest		(3,469,718)
Investment advisory fees		<u>(2,900,000)</u>
Net gain/(loss)		<u>(3,733,282)</u>
Net loss as % of initial loss		2.58%

Permanent Subcommittee on Investigations

EXHIBIT #48d

PSI-RWJ 000339



1075

04/25/00 17:45 FAX 212 849 8181

QUADRA ASSOCIATES, LLC

@002

To : Andy Robbins, Quadra

Fax Number: 212-849-8181

Date : 24 April, 2000

From : Joel Latman

THE JOHNSON COMPANY, INC.  
630 Fifth Avenue, Suite 1510  
New York, New York 10111  
Telephone: 212/332-7500  
Fax : 212/332-7510

Message :

Andy: Attached are resolutions indicating the officers of Woodglen I LLC and Woodglen I, Inc; also the Certificate of Formation for Woodglen I LLC; I have requested a copy of the Woodglen I, Inc. Formation Document from Proskauer Rose. The amount of Loss that we can use should be \$145.

Total Number of Pages 9  
(including this cover sheet)

T-274 P.01/08 F-108

Permanent Subcommittee on Investigations  
**EXHIBIT #49a**

Apr-24-00 02:24pm From:THE JOHNS

PSI-QUEL 06938

= Redacted by the Permanent  
Subcommittee on Investigations

**From:** Jeff Greenstein  
**Sent:** Monday, December 20, 1999 11:48 AM  
**To:** Chuck Wilk  
**Subject:** RE: JETS

technoolgy aint bad either! although I can barely type as I spent my FIRST hours ever on the ski slopes today

-----Original Message-----  
**From:** Chuck Wilk  
**Sent:** Monday, December 20, 1999 9:38 AM  
**To:** Jeff Greenstein  
**Subject:** RE: JETS

\$300MM ; 150 for [REDACTED] and 150 for [REDACTED] Ain't capitalism great!

-----Original Message-----  
**From:** Jeff Greenstein  
**Sent:** Monday, December 20, 1999 9:36 AM  
**To:** Larry Scheinfeld; Chuck Wilk  
**Subject:** RE: JETS

i will be spending time w/ Bob & chris to work on seasoning the stock portfolio. i feel comfortable with the idea we talked about using the forward or short against the box until the losses are generated. Are we firm on 100 or 200?

-----Original Message-----  
**From:** Larry Scheinfeld  
**Sent:** Monday, December 20, 1999 6:33 AM  
**To:** Chuck Wilk  
**Cc:** Jeff Greenstein  
**Subject:** JETS  
**Importance:** High

Joel called, he has given us the full speed ahead (whatever that means) please call him to discuss timing, cash needed by the Johnson's to buy partnership interest, who are the existing partners to the deal, and also will Quadra be a partner forever or just until the deal is done, in other words could Johnson be the Limited and General by using an entity to be the general partner.

**From:** Larry Scheinfeld  
**Sent:** Monday, August 21, 2000 2:22 PM  
**To:** Chuck Wilk  
**Subject:** RE: POINT

no problem, I understand

-----Original Message-----

**From:** Chuck Wilk  
**Sent:** Monday, August 21, 2000 3:19 PM  
**To:** Larry Scheinfeld  
**Subject:** RE: POINT

I would like to keep you on the sidelines or in our back pocket until we need a trump card (lots of cliches). It may be that given the current atmosphere we need to pay the law firms more and give them a guarantee.

-----Original Message-----

**From:** Larry Scheinfeld  
**Sent:** Monday, August 21, 2000 12:16 PM  
**To:** Chuck Wilk  
**Cc:** Jeff Greenstein; Andrew J Robbins  
**Subject:** RE: POINT

would it be of any help to you if i called Bryan Cave

-----Original Message-----

**From:** Chuck Wilk  
**Sent:** Monday, August 21, 2000 11:55 AM  
**To:** Larry Scheinfeld  
**Cc:** Jeff Greenstein; Andrew J Robbins  
**Subject:** RE: POINT

As of now, I would guess no losses for 2000 but we could start a trade that had 2001 losses. Akin Gump has written this opinion for a corporate client but they definitely require more time between events that we did on the first three trades. Jim Barry is back from vacation this week and I will speak with him on opining. Bryan Cave is a remote possibility (given their fee structure). I believe Sherman and Sterling opined for the Lehman trade and I will try to get a contact name. Jeff and I spoke and decided that in future trades we will try to have bank borrowing and actual cash purchases. All that said if we can get a firm commitment to opine and we started early in September and we had favorable market volatility we may be able to generate 2000 loss.

-----Original Message-----

**From:** Larry Scheinfeld  
**Sent:** Monday, August 21, 2000 6:00 AM  
**To:** Chuck Wilk  
**Cc:** Jeff Greenstein; Andrew J Robbins  
**Subject:** POINT

Will we be able to do any more transactions this year ?? I want to get back to two clients who are pretty far down the road. I would think 9/15 would be a drop dead date. Do you anticipate hearing back from any reputable firms ? I want to be honest with these prospects. I also have several meetings set up that I think I should probably postpone .

Permanent Subcommittee on Investigations

EXHIBIT #49c

PSI-QUEL 22486

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Subcommittee on Investigations

**From:** Jeff Greenstein  
**Sent:** Tuesday, May 16, 2000 8:44 AM  
**To:** Jeff Greenstein; Larry Scheinfeld; Chuck Wilk; Andrew J Robbins  
**Subject:** RE: POINT

under \$900 in losses as of now

-----Original Message-----  
**From:** Jeff Greenstein  
**Sent:** Monday, May 15, 2000 1:24 PM  
**To:** Larry Scheinfeld; Chuck Wilk; Andrew J Robbins  
**Subject:** RE: POINT

just to give you a perspective on timing - this morning we had approximately 1.4 bln in usable losses, on the close we had about 1.15 billion. If the market moves to where [REDACTED] is break-even it will probably be down to about 700 mln. We will try to add more positions to generate losses but they are a function of market moves. As bad as it sounds, the "snooze you lose" comment may unfold for those who can't make decisions in a timely manner. Without being to aggressive, we should make people who are considering this trade aware of the timing ramifications.

-----Original Message-----  
**From:** Larry Scheinfeld  
**Sent:** Monday, May 15, 2000 8:11 AM  
**To:** Chuck Wilk; Jeff Greenstein; Andrew J Robbins  
**Subject:** RE: POINT

could someone in Seattle keep a log and update weekly

-----Original Message-----  
**From:** Chuck Wilk  
**Sent:** Monday, May 15, 2000 11:02 AM  
**To:** Jeff Greenstein; Larry Scheinfeld; Andrew J Robbins  
**Subject:** RE: POINT

Add to prospect list:

[REDACTED]  
[REDACTED]

-----Original Message-----  
**From:** Jeff Greenstein  
**Sent:** Monday, May 15, 2000 7:48 AM  
**To:** Larry Scheinfeld; Chuck Wilk; Andrew J Robbins  
**Subject:** RE: POINT

big trade pending w/ [REDACTED] At this point I think we need to notify people that it is truly first come first served. Since the losses are dependent on market moves, who knows how many we will have at any point in thime

-----Original Message-----  
**From:** Larry Scheinfeld  
**Sent:** Monday, May 15, 2000 7:24 AM  
**To:** Chuck Wilk  
**Cc:** Jeff Greenstein; Andrew J Robbins; Norm Bonlje; Bryan White; Charles Clarvit  
**Subject:** POINT

Looks like we have no more room on the POINT trade . We should be very careful about selling any more. List is as follows:

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▶ DONE  
- DONE  
- DONE  
- PENDING

Permanent Subcommittee on Investigations

EXHIBIT #49d

PSI-QUEL 12073

1079

Redacted by the Permanent Subcommittee on Investigations	-PENDING rd-PENDING - Pending - Pending - Pending - Will know Wed.
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**QUADRA Custom Strategies, LLC**601 Union Street, 56<sup>th</sup> Floor | Seattle, WA 98101 | (206) 613-6700 | Fax (206) 613-6710**FAX COVER SHEET****CONFIDENTIAL****DATE:** February 11, 2000**TIME:** 12:41 PM**TO:** Mr. Joel Latman  
Johnson Company, Inc.**PHONE:** (212) 332-7500  
**FAX:** (212) 332-7510**FROM:** Jeff Greenstein**PAGES:** 1

Joel,

Since our meeting Wednesday, I have spent some time reviewing possible scenarios as they relate to the total up-front cash required to effectuate the contemplated transaction. It should be noted that these numbers will vary as a function of short term interest rates, the price of the stocks in the basket, and the option volatility levels in the marketplace.

We approximate the upfront cash requirements to be 6-7% of the anticipated losses (\$300,000,000) plus the NPV of 1% paid over multiple years. This cash requirement is a worst case scenario. If the basket of stocks modestly appreciates (between 1 - 5% from the purchase price) then all or a portion of the cash requirement will be available on expiration of the six month collar. If the stocks appreciate 5% or more then the maximum cash return will generate a net profit (after fees/costs) of 3% on the entire \$300,000,000. Depending on market movements during the six month collar we may have the flexibility to liquidate the position early and recoup a good portion of the initial cash.

I hope this is helpful. I will be in Europe next week so please do not hesitate to give Chuck a call if you have any questions.

cc. Chuck Wilk  
Larry Scheinfeld

The information in this facsimile message is privileged and confidential. It is intended only for the use of the recipient named above (or the employee or agent responsible to deliver it to the intended recipient). If you received this in error, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this message in error please notify us by telephone immediately, and return the original message to us at the above address via postal service. We will reimburse you for such costs. Thank you.

Permanent Subcommittee on Investigations

**EXHIBIT #50a**

PSI-QUEL 10920

---

**From:** John Baier  
**Sent:** Monday, April 17, 2000 8:10 PM  
**To:** Norm Bontje; Chuck Wilk; Larry Scheinfeld  
**Subject:** Woody docs

Attached are the tax and investment advisory agreements for Johnson's Point trade. The fee amounts shown are calculated to equal a PV of \$1.7mm for QCS and 1mm for Associates in amounts paid quarterly at the current 10-year Libor rate of 7.23% (then rounded). The total PV fee of 2.7mm is 2% of the 135mm notional amount of the trade.

Please forward your comments when you've had an opportunity to review.

John

  
 Associates  
 ngagement Letter.d.

  
 Johnson Advisory  
 Agreement.doc...

From: Chuck Wilk  
 Sent: Thursday, June 29, 2000 11:42 AM  
 To: Christopher Hirata  
 Subject: RE: Triskelion Wires

I am not sure they are questioning fees but to them the math does not match (i.e. they included Woody when we are taking no upfront fee). The reply is that the fees and the fee structure varies with each client based on our relationship and the future services we will provide.

-----Original Message-----  
 From: Christopher Hirata  
 Sent: Thursday, June 29, 2000 7:46 AM  
 To: Chuck Wilk  
 Cc: Brian Hanson  
 Subject: FW: Triskelion Wires

It looks like they are questioning our fees based on their assumption that we are only getting 1%. Shall we reply that our fees may exceed 1% based on ongoing advisory services we may provide the client?

-----Original Message-----  
 From: Rajan Puri  
 Sent: Thursday, June 29, 2000 2:22 AM  
 To: 'Brian Hanson'; Rajan Puri  
 Cc: Christopher Hirata  
 Subject: RE: Triskelion Wires

Brian

i) Neither John nor I have instructed the IoM guys to sign an Investment Advisory Agreement between Burgundy and QCS...is this something you have dealt with directly?

ii) We understand you were extracting fees representing 1% of the initial losses generated...at 1%, the fees per tranche would be:

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 Subcommittee on Investigations

1.218  
 1.449  
 1.816

totalling USD4.483million. How does this reconcile to the USD4.84million (3.02+1.82) you are requesting?

iii) As I mentioned briefly to you several days back, the Euram 1% fees appear to have been calculated based on the losses the clients were aiming to generate (totalling USD4.45mio), rather than the numbers actually generated (USD4.483mio, as outlined above)...I think therefore that Euram are due another USD33k - does this make sense to you?

Later  
 Raj

-----Original Message-----  
 From: Brian Hanson [mailto:BrianH@gcm.com]  
 Sent: Wednesday, June 28, 2000 8:28 PM  
 To: 'Rajan Puri'  
 Cc: Christopher Hirata  
 Subject: RE: Triskelion Wires

Permanent Subcommittee on Investigations

EXHIBIT #50c

PSI-QUEL 27141



No need to apologize. See below.

----- = Redacted by the Permanent  
Subcommittee on Investigations

-----Original Message-----

From: Rajan Puri [mailto:rajan.puri@euraminvest.com]  
Sent: Wednesday, June 28, 2000 10:04 AM  
To: 'Brian Hanson'  
Subject: RE: Triskelion Wires

Hi Brian

A couple of quick questions for you:

i) Under the Investment Advisory Agreement between Barnville and Quadra, an initial payment of US\$3.02million was wired to Quadra as an initial payment for services; which tranches of the trade does this relate to? 1 and 3

ii) if we wire US\$1.82million from Burgundy to Quadra, in line with your request below, am I right in assuming that you will need a corresponding Investment Advisory Agreement in place between Quadra and Burgundy? Is this the fee re [REDACTED] Yes, it is [REDACTED]'s fee and an advisory agreement btwn. QCS and Burgundy is being signed as we speak.

Apologies for these questions, but I am simply passing on questions from the IoM guys (who need the info for their record keeping, given they are being requested to move cash) that I am currently unable to answer

Cheers  
Raj

-----Original Message-----

From: Brian Hanson [mailto:BrianH@gcm.com]  
Sent: Friday, June 23, 2000 12:35 AM  
To: 'john staddon (euram)'; 'raj puri (euram)'  
Cc: Christopher Hirata; Chuck Wilk  
Subject: Triskelion Wires

John and Raj,

Since the Burgundy proceeds of \$5,414,781 at Barnville should have been moved to an account at Triskelion by now, please make the following wire transfer. The attached document is an invoice for services.

<<Invoice Burgundy.doc>>

From:  
Burgundy Triskelion account

To:  
Bank of America  
ABA #: [REDACTED]  
Account Name: Quadra Custom Strategies  
Account #: [REDACTED]  
Amount: \$1,820,000

**From:** Larry Scheinfeld  
**Sent:** November 10, 2000 20:45  
**To:** Jeff Greenstein; Andrew J Robbins  
**Cc:** Chuck Wilk  
**Subject:** Re: POINT PRICING- [REDACTED]

[REDACTED] = Redacted by the Permanent  
 Subcommittee on Investigations

**Importance:** High

Something under 6 would be better. At least try and get something back from b of a.

-----  
 Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

-----Original Message-----

**From:** Jeff Greenstein <jgreenstein@quellos.com>  
**To:** Larry Scheinfeld <larry@quellos.com>; Andrew J Robbins <arobbins@quellos.com>  
**CC:** Chuck Wilk <cwilk@quellos.com>  
**Sent:** Fri Nov 10 20:40:19 2000  
**Subject:** POINT PRICING- [REDACTED]

Will probably come in around 6.00 - 6.25% - the lower figure we talked about earlier today assumed there was a leverage component which is no longer included. We should still be in good shape relative to the client expectations. Also the value of the basket fell significantly which means we need a higher collar strike to generate enough losses on the FMV portfolio given the increased fees (they are based on the loss amount). The FMV of the portfolio has fallen from 104 - 90 million relative to the loss size. Also, important to mention is that they stand a reasonable chance getting a rebate if the combined position is liquidated within the first two months. (In all likelihood it will)

Permanent Subcommittee on Investigations  
**EXHIBIT #50d**

PSI-QUEL 25003

## PURCHASE AGREEMENT

THIS AGREEMENT is made on this 28th day of December 1999

**BETWEEN:**

- (1) Barnville Ltd whose registered office is at 19 Mount Havelock, Douglas Isle of Man, IM1 2QG (the "Purchaser"); and
- (2) Jackstones Ltd whose registered office is at 12-14 Finch Road, Douglas, Isle of Man (the "Vendor"); and

**WHEREAS:**

The Vendor wishes to sell and the Purchaser wishes to buy the Purchase Shares (as defined below) in accordance with and subject to the terms of this Agreement.

NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED AS FOLLOWS:

**1. Interpretation**

- 1.1 In this Agreement, unless the context otherwise requires, the following words and expressions will have the meanings set opposite them:

"Purchase Shares" means each of the shares specified in the Appendix hereto.

"Trade Date" means 28 December 1999

"Settlement Date" means 3 January 2000.

- 1.2 Clause headings are for ease of reference only and are not intended to affect the interpretation of this Agreement.

**2. Sale and Purchase**

On the Trade Date, the Vendor shall sell as beneficial owner free from all liens, charges, encumbrances and any other security or quasi security interests (together, "Security Interests") (which the Vendor hereby represents and warrants to be the case) and the Purchaser shall purchase the Purchase Shares.

**3. Consideration**

The consideration for the sale of the Purchase Shares pursuant to the foregoing shall be USD 397,201,727 (the "Purchase Price") and shall be payable by the Purchaser to the

2.

Vendor for value on the Settlement Date. The Purchase Price referable to each parcel of shares is specified in the Appendix hereto.

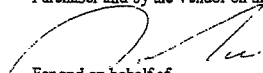
#### 4. Settlement

On the Settlement Date, the Vendor shall deliver to the Purchaser, or procure delivery to the Purchaser of, all instruments of transfer in respect of the Purchase Shares together with all certificates and any other document which may reasonably be required to give full legal and beneficial title to the Purchase Shares free from all Security Interests or which may be necessary to enable the Purchaser to procure the registration of the same in the name of the Purchaser or its nominee. The Vendor hereby authorises the Purchaser to set off against the Purchase Price any sum payable by the Vendor to the Purchaser on the Settlement Date.


#### 6. Governing Law and Jurisdiction

This Agreement entered into pursuant to this Agreement will be governed by and construed in accordance with the laws of the Isle of Man.

AS WITNESS this Agreement has been entered into by duly authorised representatives of the Purchaser and by the Vendor on the date first written above.

  
For and on behalf of  
Barnville Ltd

Name: *PAUL MOORE*  
Title: *DIRECTOR*  
Date:

For                      and                      on                      behalf                      of  
Jackstones Ltd  
  
Name: \_\_\_\_\_  
Title: *Director*  
Date:

Appendix

Security	RIC Code	Number of Shares	Trade Price in USD	Purchase Price in USD
Commerce One	CMRC.O	357,143	250.0000	89,285,750
Dell Computer	DELL.O	1,923,077	51.5600	99,153,850
eBay	EBAY.O	769,231	139.8700	107,592,340
MCI-Worldcom	WCOM.O	1,886,792	53.6200	101,169,787
Totals		4,936,243	80.43	397,201,727

*Handwritten corrections:*  
 Under MCI-Worldcom: 1,886,792 crossed out, replaced with 1,257,861.  
 Under Totals: 4,936,243 crossed out, replaced with 4,307,312.

Vendor for value on the Settlement Date. The Purchase Price referable to each parcel of shares is specified in the Appendix hereto.


#### 4. Settlement

On the Settlement Date, the Vendor shall deliver to the Purchaser, or procure delivery to the Purchaser of, all instruments of transfer in respect of the Purchase Shares together with all certificates and any other document which may reasonably be required to give full legal and beneficial title to the Purchase Shares free from all Security Interests or which may be necessary to enable the Purchaser to procure the registration of the same in the name of the Purchaser or its nominee. The Vendor hereby authorises the Purchaser to set off against the Purchase Price any sum payable by the Vendor to the Purchaser on the Settlement Date.

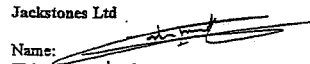
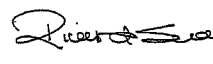
#### 6. Governing Law and Jurisdiction

This Agreement entered into pursuant to this Agreement will be governed by and construed in accordance with the laws of the Isle of Man.

AS WITNESS this Agreement has been entered into by duly authorised representatives of the Purchaser and by the Vendor on the date first written above.

  
For and on behalf of  
Barnville Ltd

Name: *PAUL MOORE*  
Title: *DIRECTOR*  
Date:

For Jackstones Ltd and on behalf of  
   
Name:  
Title: *Vendor*  
Date:

## PURCHASE AGREEMENT

THIS AGREEMENT is made on this 3rd day of January 2000

**BETWEEN:**

- (1) Barnville Ltd whose registered office is at 19 Mount Havelock, Douglas Isle of Man, IM1 2QG (the "Purchaser"); and
- (2) Jackstones Ltd whose registered office is at 12-14 Finch Road, Douglas, Isle of Man (the "Vendor"); and

**WHEREAS:**

The Vendor wishes to sell and the Purchaser wishes to buy the Purchase Shares (as defined below) in accordance with and subject to the terms of this Agreement.

NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED AS FOLLOWS:

**1. Interpretation**

- 1.1 In this Agreement, unless the context otherwise requires, the following words and expressions will have the meanings set opposite them:

"Purchase Shares" means each of the shares specified in the Appendix hereto.

"Trade Date" means 3 January 2000

"Settlement Date" means 6 January 2000.

- 1.2 Clause headings are for ease of reference only and are not intended to affect the interpretation of this Agreement.

**2. Sale and Purchase**

On the Trade Date, the Vendor shall sell as beneficial owner free from all liens, charges, encumbrances and any other security or quasi security interests (together, "Security Interests") (which the Vendor hereby represents and warrants to be the case) and the Purchaser shall purchase the Purchase Shares.

**3. Consideration**

The consideration for the sale of the Purchase Shares pursuant to the foregoing shall be USD 1,648,791,354 (the "Purchase Price") and shall be payable by the Purchaser to the

Permanent Subcommittee on Investigations

**EXHIBIT #51b**

PSI-QUEL 09157

Vendor for value on the Settlement Date. The Purchase Price referable to each parcel of shares is specified in the Appendix hereto.

**4. Settlement**

On the Settlement Date, the Vendor shall deliver to the Purchaser, or procure delivery to the Purchaser of, all instruments of transfer in respect of the Purchase Shares together with all certificates and any other document which may reasonably be required to give full legal and beneficial title to the Purchase Shares free from all Security Interests or which may be necessary to enable the Purchaser to procure the registration of the same in the name of the Purchaser or its nominee. The Vendor hereby authorises the Purchaser to set off against the Purchase Price any sum payable by the Vendor to the Purchaser on the Settlement Date.

**6. Governing Law and Jurisdiction**

This Agreement entered into pursuant to this Agreement will be governed by and construed in accordance with the laws of the Isle of Man.

AS WITNESS this Agreement has been entered into by duly authorised representatives of the Purchaser and by the Vendor on the date first written above.

For and on behalf of  
**Barnville Ltd**

Name:  
Title:  
Date:

For and on behalf of  
**Jackstones Ltd**

Name:  
Title:  
Date:



**Appendix**

Security	RIC Code	Number of Shares	Trade Price in USD	Purchase Price in USD
Amazon.com	AMZN.O	1,136,364	89.37	101,556,851
America On-Line	AOL.N	1,250,000	82.75	103,437,500
Broadvision	BVSN.O	546,448	189.43	103,513,645
Clear Channel	CCU.N	1,123,596	87.75	98,595,549
CMGI	CMGI.O	645,161	163.22	105,303,178
DoubleClick	DCLK.O	781,250	134.00	104,687,500
Gateway	GTW.N	1,423,488	69.37	98,747,363
Global Crossing	GBLX.O	2,083,333	49.12	102,333,317
I2 Technologies	ITWO.O	568,182	188.50	107,102,307
InternetCapital Group	ICGE.O	534,759	200.00	106,951,800
Liberty Digital	LDIG.O	1,538,462	70.12	107,876,955
Lucent Technology	LU.N	1,315,789	77.12	101,473,648
Qualcom	QCOM.O	568,182	179.31	101,880,714
QWest Communications	Q.N	2,339,181	42.12	98,526,304
Verisign	VRSN.O	526,316	190.12	100,063,198
Yahoo!	YHOO.O	224,719	475.00	106,741,525
<b>Totals</b>		<b>16,605,230</b>		<b>1,648,791,354</b>

## PURCHASE AGREEMENT

THIS AGREEMENT is made on this 10th day of January 2000

### BETWEEN:

- (1) Barnville Ltd whose registered office is at 19 Mount Havelock, Douglas Isle of Man, IM1 2QG (the "Purchaser"); and
- (2) Jackstones Ltd whose registered office is at 12-14 Finch Road, Douglas, Isle of Man (the "Vendor"); and

### WHEREAS:

The Vendor wishes to sell and the Purchaser wishes to buy the Purchase Shares (as defined below) in accordance with and subject to the terms of this Agreement.

NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED AS FOLLOWS:

### 1. Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following words and expressions will have the meanings set opposite them:

"Purchase Shares" means each of the shares specified in the Appendix hereto.

"Trade Date" means 10 January 2000

"Settlement Date" means 13 January 2000.

- 1.2 Clause headings are for ease of reference only and are not intended to affect the interpretation of this Agreement.

### 2. Sale and Purchase

On the Trade Date, the Vendor shall sell as beneficial owner free from all liens, charges, encumbrances and any other security or quasi security interests (together, "Security Interests") (which the Vendor hereby represents and warrants to be the case) and the Purchaser shall purchase the Purchase Shares.

### 3. Consideration

The consideration for the sale of the Purchase Shares pursuant to the foregoing shall be USD 1,160,339,562 (the "Purchase Price") and shall be payable by the Purchaser to the

Permanent Subcommittee on Investigations

EXHIBIT #51c

PSI-QUEL 26597

Vendor for value on the Settlement Date. The Purchase Price referable to each parcel of shares in specified in the Appendix hereto.

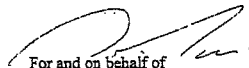
#### 4. Settlement

On the Settlement Date, the Vendor shall deliver to the Purchaser, or procure delivery to the Purchaser of, all instruments of transfer in respect of the Purchase Shares together with all certificates and any other document which may reasonably be required to give full legal and beneficial title to the Purchase Shares free from all Security Interests or which may be necessary to enable the Purchaser to procure the registration of the same in the name of the Purchaser or its nominee. The Vendor hereby authorises the Purchaser to set off against the Purchase Price any sum payable by the Vendor to the Purchaser on the Settlement Date.

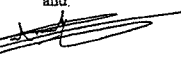
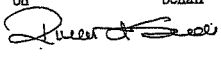
#### 6. Governing Law and Jurisdiction

This Agreement entered into pursuant to this Agreement will be governed by and construed in accordance with the laws of the Isle of Man.

AS WITNESS this Agreement has been entered into by duly authorised representatives of the Purchaser and by the Vendor on the date first written above.

  
For and on behalf of  
Barnville Ltd

Name: *Paul Hooes*  
Title: *Director*  
Date:

For                      and                      on                      behalf                      of  
Jackstones Ltd                                              
Name:                      *David*  
Title:                      *Director*  
Date:

Appendix

Security	RIC Code	Number of Shares	Trade Price in USD	Purchase Price in USD
Arba Inc	ARBA.O	540,541	194.00	104,864,954
AtHome Inc	ATHM.O	2,484,472	40.25	99,999,998
BEA Systems	BEAS.O	1,307,190	84.00	109,803,960
Broadcom	BRCM.O	340,136	295.56	100,530,596
Exodus Communications	EXDS.O	980,392	104.00	101,960,768
Infospace	INSP.O	881,057	114.50	100,881,027
JDS Uniphase	JDSU.O	510,204	200.37	102,229,575
Juniper Networks	JNPR.O	<del>373,480</del> <del>104,483</del>	<del>108.50</del> <del>325.50</del>	34,012,580
Network Applications	NTAP.O	<del>1,123,596</del>	88.62	99,573,078
PMCS	PMCS.O	619,195	164.50	101,857,578
Veritas Software	VRTS.O	709,220	143.81	101,992,928
Vignette Corporation	VIGN.O	540,541	189.87	102,632,520
		<del>10,588,024</del> <del>10,141,037</del>		1,160,339,562

# PURCHASE AGREEMENT

THIS AGREEMENT is made on this 28<sup>th</sup> day of February 2000

## BETWEEN:

- (1) Barnville Ltd whose registered office is at 19 Mount Havlock, Douglas Isle of Man, IM1 2QG (the "Purchaser"); and
- (2) Jackstones Ltd whose registered office is at 12-14 Finch Road, Douglas, Isle of Man (the "Vendor"); and

## WHEREAS:

The Vendor wishes to sell and the Purchaser wishes to buy the Purchase Shares (as defined below) in accordance with and subject to the terms of this Agreement.

NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED AS FOLLOWS:

### 1. Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following words and expressions will have the meanings set opposite them:

"Purchase Shares" means each of the shares specified in the Appendix hereto,

"Trade Date" means 28 February 2000

"Settlement Date" means 2 March 2000.

- 1.2 Clause headings are for ease of reference only and are not intended to affect the interpretation of this Agreement.

### 2. Sale and Purchase

On the Trade Date, the Vendor shall sell as beneficial owner free from all liens, charges, encumbrances and any other security or quasi security interests (together, "Security Interests") (which the Vendor hereby represents and warrants to be the case) and the Purchaser shall purchase the Purchase Shares.

### 3. Consideration

The consideration for the sale of the Purchase Shares pursuant to the foregoing shall be USD 3,399,999,848 (the "Purchase Price") and shall be payable by the Purchaser to the

Permanent Subcommittee on Investigations

EXHIBIT #51d

[TX/RX NO 5675] PSI-QUEL 26600

Vendor for value on the Settlement Date. The Purchase Price referable to each parcel of shares is specified in the Appendix hereto.

#### 4. Settlement

On the Settlement Date, the Vendor shall deliver to the Purchaser, or procure delivery to the Purchaser of, all instruments of transfer in respect of the Purchase Shares together with all certificates and any other document which may reasonably be required to give full legal and beneficial title to the Purchase Shares free from all Security Interests or which may be necessary to enable the Purchaser to procure the registration of the same in the name of the Purchaser or its nominee. The Vendor hereby authorises the Purchaser to set off against the Purchase Price any sum payable by the Vendor to the Purchaser on the Settlement Date.

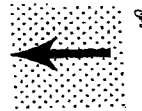
#### 6. Governing Law and Jurisdiction

This Agreement entered into pursuant to this Agreement will be governed by and construed in accordance with the laws of the Isle of Man.

AS WITNESS this Agreement has been entered into by duly authorised representatives of the Purchaser and by the Vendor on the date first written above.

For and on behalf of  
Barrville Ltd

Name:  
Title:  
Date:



For and on behalf of  
Jackstones Ltd

Name: *Richard Scott*  
Title: *Director*  
Date: *30 Jan 2000*

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2.

Vendor for value on the Settlement Date. The Purchase Price referable to each parcel of shares is specified in the Appendix hereto.

#### 4. Settlement

On the Settlement Date, the Vendor shall deliver to the Purchaser, or procure delivery to the Purchaser of, all instruments of transfer in respect of the Purchase Shares together with all certificates and any other document which may reasonably be required to give full legal and beneficial title to the Purchase Shares free from all Security Interests or which may be necessary to enable the Purchaser to procure the registration of the same in the name of the Purchaser or its nominee. The Vendor hereby authorises the Purchaser to set off against the Purchase Price any sum payable by the Vendor to the Purchaser on the Settlement Date.

#### 6. Governing Law and Jurisdiction

This Agreement entered into pursuant to this Agreement will be governed by and construed in accordance with the laws of the Isle of Man.

AS WITNESS this Agreement has been entered into by duly authorised representatives of the Purchaser and by the Vendor on the date first written above.

  
For and on behalf of  
Barnville Ltd

Name: A NICHOLSON  
Title: DIRECTOR  
Date: 28<sup>th</sup> February 2000

For                      and                      on                      behalf                      of  
Jackstones Ltd

Name:  
Title:  
Date:

## APPENDIX

Symbol	Stock	Business	Trade Date	Shares Traded	Trade Price	Market Value	Weighting
1	AMZN	Amazon	28-Feb-00	1,520,913	65.7900	100,000,090	2.9%
2	AOL	America Online	28-Feb-00	1,649,485	60.6250	100,000,028	2.9%
3	ARBA	Arba Inc	28-Feb-00	367,309	272.2500	99,999,875	2.9%
4	ATHM	At Home - Inc	28-Feb-00	2,996,255	33.3750	100,000,011	2.9%
5	BEAS	Bea Systems	28-Feb-00	827,301	120.8750	100,000,008	2.9%
6	BGEN	Biogen Inc	28-Feb-00	953,516	104.8750	99,999,991	2.9%
7	BRCM	Broadcom	28-Feb-00	550,964	181.5000	99,999,966	2.9%
8	BVSN	Broadvision	28-Feb-00	429,069	233.0625	99,999,894	2.9%
9	CNXT	Conexant Systems	28-Feb-00	1,032,924	96.8125	99,999,955	2.9%
10	COMS	3Com Corp	28-Feb-00	1,264,822	79.0625	99,999,989	2.9%
11	CSCO	Cisco Systems	28-Feb-00	765,917	130.5625	100,000,038	2.9%
12	CTXS	Citrix Systems	28-Feb-00	970,285	103.0625	99,999,998	2.9%
13	EBAY	EBAY	28-Feb-00	689,358	145.0625	99,999,995	2.9%
14	EMC	EMC corp/Mass	28-Feb-00	847,458	118.0000	100,000,044	2.9%
15	EIEK	E-tek Dynamics	28-Feb-00	386,100	259.0000	99,999,900	2.9%
16	EXDS	Exodus Comm.	28-Feb-00	747,664	133.7900	100,000,060	2.9%
17	GBLX	Global Crossing	28-Feb-00	2,168,022	46.1250	100,000,015	2.9%
18	GTTW	Gateway	28-Feb-00	1,438,849	69.5000	100,000,006	2.9%
19	IMNX	Immune	28-Feb-00	524,246	190.7500	99,999,925	2.9%
20	INSP	InfoSpace	28-Feb-00	458,453	218.1250	100,000,061	2.9%
21	ITWO	IT Technologies	28-Feb-00	590,842	169.2500	100,000,009	2.9%
22	JDSU	JDS Uniphase	28-Feb-00	395,257	253.0000	100,000,021	2.9%
23	JNFR	Juniper Networks	28-Feb-00	436,562	229.0625	99,999,983	2.9%
24	MPNX	Metromedia Fiber	28-Feb-00	1,327,801	75.3125	100,000,013	2.9%
25	NTAP	Network Application	28-Feb-00	543,478	184.0000	99,999,952	2.9%
26	PMCS	PMCS	28-Feb-00	559,441	178.7500	100,000,079	2.9%
27	Q	QWEST	28-Feb-00	2,173,913	46.0000	99,999,998	2.9%
28	QCOM	Qualcom	28-Feb-00	698,080	143.2500	99,999,960	2.9%
29	QLGC	Qlogic	28-Feb-00	706,090	141.6250	99,999,996	2.9%
30	RNWK	RealNetworks Inc	28-Feb-00	1,369,863	73.0000	99,999,999	2.9%
31	VIGN	Vignette Corp	28-Feb-00	443,828	225.3125	99,999,996	2.9%
32	VERN	Verisign	28-Feb-00	406,401	246.0625	100,000,046	2.9%
33	VRTS	Veritas	28-Feb-00	531,738	188.0625	99,999,978	2.9%
34	XLNX	Xilinx Inc	28-Feb-00	1,423,488	70.2500	100,000,032	2.9%
Totals:				32,195,692		3,399,999,848	100.0%



## PURCHASE AGREEMENT

THIS AGREEMENT is made on this 6th day of June 2000

### BETWEEN:

- (1) Barnville Ltd whose registered office is at 19 Mount Havelock, Douglas Isle of Man, IM1 2QG (the "Purchaser"); and
- (2) Jackstones Ltd whose registered office is at 12-14 Finch Road, Douglas, Isle of Man (the "Vendor"); and

### WHEREAS:

The Vendor wishes to sell and the Purchaser wishes to buy the Purchase Shares (as defined below) in accordance with and subject to the terms of this Agreement.

NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED AS FOLLOWS:

### 1. Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following words and expressions will have the meanings set opposite them:

"Purchase Shares" means each of the shares specified in the Appendix hereto.

"Trade Date" means 6 June 2000

"Settlement Date" means 9 June 2000.

- 1.2 Clause headings are for ease of reference only and are not intended to affect the interpretation of this Agreement.

### 2. Sale and Purchase

On the Trade Date, the Vendor shall sell as beneficial owner free from all liens, charges, encumbrances and any other security or quasi security interests (together, "Security Interests") (which the Vendor hereby represents and warrants to be the case) and the Purchaser shall purchase the Purchase Shares.

### 3. Consideration

The consideration for the sale of the Purchase Shares pursuant to the foregoing shall be USD ~~3,000,000.00~~ (the "Purchase Price") and shall be payable by the Purchaser to the

*PM,*  
3,000,154.37\$

Permanent Subcommittee on Investigations

EXHIBIT #51e

[TX/RX NO 5830] PPMQUEL 26604

Vendor for value on the Settlement Date. The Purchase Price referable to each parcel of shares is specified in the Appendix hereto.

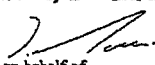
#### 4. Settlement

On the Settlement Date, the Vendor shall deliver to the Purchaser, or procure delivery to the Purchaser of, all instruments of transfer in respect of the Purchase Shares together with all certificates and any other document which may reasonably be required to give full legal and beneficial title to the Purchase Shares free from all Security Interests or which may be necessary to enable the Purchaser to procure the registration of the same in the name of the Purchaser or its nominee. The Vendor hereby authorises the Purchaser to set off against the Purchase Price any sum payable by the Vendor to the Purchaser on the Settlement Date.

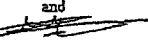
#### 6. Governing Law and Jurisdiction

This Agreement entered into pursuant to this Agreement will be governed by and construed in accordance with the laws of the Isle of Man.

AS WITNESS this Agreement has been entered into by duly authorised representatives of the Purchaser and by the Vendor on the date first written above.

  
For and on behalf of  
Barnville Ltd

Name: *Paul Hoops*  
Title: *DIRECTOR*  
Date: *22-6-2002*

For Jackstones Ltd and  on behalf of

Name: *Erasmus Murray*  
Title: *Director*  
Date: *22 June 2002*

20/08/00 14:38 [TX/RX NO 5630] P. 3

2.

Vendor for value on the Settlement Date. The Purchase Price referable to each parcel of shares is specified in the Appendix hereto.

#### 4. Settlement

On the Settlement Date, the Vendor shall deliver to the Purchaser, or procure delivery to the Purchaser of, all instruments of transfer in respect of the Purchase Shares together with all certificates and any other document which may reasonably be required to give full legal and beneficial title to the Purchase Shares free from all Security Interests or which may be necessary to enable the Purchaser to procure the registration of the same in the name of the Purchaser or its nominee. The Vendor hereby authorises the Purchaser to set off against the Purchase Price any sum payable by the Vendor to the Purchaser on the Settlement Date.

#### 6. Governing Law and Jurisdiction

This Agreement entered into pursuant to this Agreement will be governed by and construed in accordance with the laws of the Isle of Man.

AS WITNESS this Agreement has been entered into by duly authorised representatives of the Purchaser and by the Vendor on the date first written above.

For and on behalf of  
Barnville Ltd

Name:  
Title:  
Date:

For and on behalf of  
Jackstones Ltd

Name: G. M. M. M.  
Title: Director  
Date: 6 August 2000

## APPENDIX

Stock	Name	Shares Outstanding (Millions)	Market Cap (Billions)	6/6/00 Official close	Shares to be Purchased	Total Cost
ADBE	ADOBE SYSTEMS INC	119.73	13.10	115.6875	864,000	\$ 99,954,000
ADCT	ADC TELECOMMUNICATIONS INC	305.75	19.20	70.5000	1,418,000	99,969,000
AMAT	APPLIED MATERIALS INC	805.88	77.11	89.3125	1,120,000	100,030,000
AMCC	APPLIED MICRO CIRCUITS CORP	108.36	11.05	106.8125	936,000	99,976,500
AUD	AUTOMATIC DATA PROCESSING	627.21	32.61	57.6875	1,733,000	99,972,438
BRCD	BROCADE COMMUNICATIONS SYS	108.48	13.45	138.8750	720,000	99,990,000
BRGM	BROADCOM CORP-CL A	117.89	36.59	156.0000	641,000	99,996,000
CSCO	CISCO SYSTEMS INC	6,937.63	435.34	61.3125	1,631,000	100,000,688
DELL	DELL COMPUTER CORP	2,586.75	124.00	44.6875	2,238,000	100,010,625
EBAY	EBAY INC	130.18	16.73	71.8125	1,393,000	100,034,813
EMC	EMC CORP/MASS	1,041.08	138.33	65.0000	1,538,000	99,970,000
ETEK	E-TEK DYNAMICS INC	67.92	12.10	227.1250	440,000	99,935,000
FDC	FIRST DATA CORP	416.63	19.95	54.5625	1,833,000	100,013,063
INSP	INFOSPACE INC	216.58	12.25	49.7500	2,010,000	99,997,500
JDSU	JDS UNIPHASE CORP	500.30	62.94	107.0000	935,000	100,045,000
JNPR	JUNIPER NETWORKS INC	156.50	29.58	201.3750	497,000	100,083,375
MFNX	METROMEDIA FIBER NETWORK-A	472.58	15.41	36.5000	2,740,000	100,010,000
MU	MICRON TECHNOLOGY INC	523.20	32.39	77.0625	1,298,000	100,027,125
NOK	NOKIA CORP -SPON ADR	4,573.09	252.35	55.6250	1,798,000	100,013,750
NTAP	NETWORK APPLIANCE INC	304.57	19.25	73.8750	1,354,000	100,026,750
NXLK	NEXLINK COMMUNICATIONS-A	80.62	11.73	81.1875	1,232,000	100,023,000
ORCL	ORACLE CORPORATION	2,838.41	205.25	77.0625	1,298,000	100,027,125
PCS	SPRINT CORP (PCS GROUP)	913.85	54.37	56.9375	1,756,000	99,982,250
PMCS	PMC - SIERRA INC	139.21	23.32	180.0000	556,000	100,080,000
SDLJ	SDL INC	72.75	12.06	255.0000	392,000	99,960,000
SUNW	SUN MICROSYSTEMS INC	1,746.96	149.15	83.8750	1,192,000	99,979,000
TER	TERADYNE INC	172.79	17.53	92.0000	1,087,000	100,004,000
VGN	VIGNETTE CORPORATION	193.37	10.49	40.2500	2,484,000	99,981,000
VRTS	VERITAS SOFTWARE CORP	393.60	37.29	124.8750	801,000	100,024,875
XLNX	XILINX INC	321.29	20.70	82.8125	1,208,000	100,037,500
					<u>39,143,000</u>	<u>3,000,154,375</u>

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**DATED 28 December 1999**



Permanent Subcommittee on Investigations

**EXHIBIT #51f**

[TX/RX NO 55311] 2002  
PSI-QUEL 26608

THIS AGREEMENT IS MADE ~~THE~~ [28TH] DAY OF DECEMBER 1999

BETWEEN:

- (1) Jackstones Ltd a company incorporated under the laws of the Isle of Man (the "Borrower"); and
- (2) Barrville Ltd a company incorporated under the laws of the Isle of Man (the "Lender").

WHEREAS:

- (1) From time to time the parties hereto may enter into transactions in which the Lender agrees to lend to the Borrower securities ("Securities") with a simultaneous agreement by the Borrower to transfer to the Lender free of payment securities equivalent to such Securities at a date certain or on demand by the Lender.
- (2) Each such transaction shall be referred to herein as a "Transaction" and shall be governed by the terms of this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

# 1. DEFINITIONS AND INTERPRETATION

(A) In this Agreement:

"Act of Insolvency"

means in relation to either Party:

- (i) its making a general assignment for the benefit of, or entering into a reorganisation, arrangement or composition with creditors; or
- (ii) its admitting in writing that it is unable to pay its debts as they become due; or
- (iii) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver or liquidator or analogous officer of it or any material part of its property; or
- (iv) the presentation or filing of a petition in respect of it (other than by the other Party to this Agreement in respect of any obligation under this Agreement) in any court or before any agency alleging or for the bankruptcy, winding-up or insolvency of such Party (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re-adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition (except in the case of a petition for

winding-up or any analogous proceeding in respect of which no such 60 day period shall apply) not having been stayed or dismissed within 60 days of its filing; or

- (v) the appointment of a receiver, administrator, liquidator or trustee or analogous officer of such Party over all or any material part of such Party's property; or
- (vi) the convening of any meeting of its creditors for the purpose of considering a voluntary arrangement (or any analogous proceeding);

and such insolvency is material in the reasonable opinion of the Borrower;

"Business Day"	means a day on which banks and securities markets are open for business generally in London and, in relation to the delivery or redelivery of any Securities or Equivalent Securities, in the place(s) where such securities are to be delivered;
"Cash Collateral Amount"	means, with respect to a Transaction, the amount specified as such in the applicable Confirmation;
"Close of Business"	means the time at which banks close in the business centre in which payment is to be made;
"Confirmation"	shall have the meaning given in Clause 2;
"Delivery Date"	means, with respect to a Transaction, the date specified as such on the Confirmation;
"Defaulting Party"	shall have the meaning given in Clause 13;
"Equivalent Securities"	means securities of an identical type, nominal value, description and amount to the Securities borrowed and such term shall include the certificates and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate). If and to the extent that such Securities have been converted, subdivided, consolidated, redeemed, made the subject of a takeover, capitalisation issue, rights issue or event similar to any of the foregoing, the expression shall have the following meaning: <ul style="list-style-type: none"> <li>(a) in the case of conversion, subdivision or consolidation the securities into which the borrowed Securities have been converted, subdivided or consolidated;</li> <li>(b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;</li> </ul>

- (c) in the case of a capitalisation issue, the borrowed Securities TOGETHER WITH the securities allotted by way of a bonus thereon;
- (d) in the case of a rights issue, the borrowed Securities TOGETHER WITH the securities allotted thereon, PROVIDED THAT the Lender has paid to the Borrower all and any sums due in respect thereof;
- (e) in the case of any event similar to any of the foregoing, the borrowed Securities TOGETHER WITH or replaced by a sum of money or securities equivalent to that received in respect of such borrowed Securities resulting from such event;

For the purposes of this definition, securities are equivalent to other securities where they are of an identical type, nominal value, description and amount and such term shall include the certificate and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate);

"Event of Default"	has the meaning given in Clause 13;
"Income"	means, with respect to any Security at any time, all interest, dividends, coupons or other distributions thereon;
"Income Payment Date"	means, with respect to any Securities, the date on which Income is paid by the issuer in respect to such Securities;
"Interest Rate"	means, with respect to a Transaction, the rate specified as such in the Confirmation;
"Lending Fee"	means, with respect to a Transaction, the amount specified as such in the relevant Confirmation or, in the case of an Open Transaction, the amount determinable in accordance with the manner set out in the Confirmation;
"Nominee"	means an agent or a nominee appointed by either Party to accept delivery of, hold or deliver Securities or Equivalent Securities on its behalf whose appointment has been notified to the other Party;
"Non-Defaulting Party"	shall have the meaning given in Clause 13;
"Open Transaction"	means a Transaction the Redelivery Date of which is unspecified in the Confirmation, but which the termination of which may be triggered in accordance with Clause 2(e) and (e);



"Parties"	means the Lender and the Borrower and "Party" shall be construed accordingly;
"Securities"	means, with respect to a Transaction, the type and number of securities or financial instruments set out as such in the Confirmation for that Transaction;
"Redelivery Date"	means the date upon which Securities are or are to be transferred to the Borrower in accordance with this Agreement;

(B) All headings appear for convenience only and shall not affect the interpretation hereof.

(C) Notwithstanding the use of expressions such as "Borrower", "Lender", "lend", "redeliver" etc. which are used to reflect terminology used in the market for transactions of the kind provided for in this Agreement, title to Securities "borrowed" or "lent" in accordance with this Agreement shall pass from one Party to another as provided for in this Agreement, the Party obtaining such title being obliged to redeliver Equivalent Securities.

## 2. INITIATION, CONFIRMATION AND TERMINATION

(a) A Transaction may be entered into orally or in writing at the initiation of either the Borrower or the Lender provided that the Securities that are to be the subject of the Transaction are acceptable to the Borrower.

(b) Upon agreeing to enter into a Transaction hereunder the Borrower shall promptly deliver to the Lender written confirmation of such Transaction (a "Confirmation") in the form set out in the Annex hereto specifying the Securities (together with identification numbers and references), the Delivery Date, the Redelivery Date (if not an Open Transaction), the Lending Fee and such other matters or supplemental terms as may be agreed between the Parties with respect to that Transaction.

The Confirmation relating to a Transaction shall, together with this Agreement, constitute prima facie evidence of the terms agreed between the Borrower and the Lender for that Transaction unless objection is made with respect to the Confirmation promptly after receipt thereof. In event of any conflict between the terms of such Confirmation and this Agreement, the Confirmation shall prevail in respect of that Transaction and those terms only.

(c) Termination of a Transaction will be effected, in the case of an Open Transactions, on the date specified for termination in the relevant party's written demand for termination, and, in the case of fixed term Transactions, on the Redelivery Date specified in the Confirmation.

(d) In the case of on demand Transactions, demand for termination shall be made by the Borrower or the Lender by telephone or otherwise, and shall provide for termination to occur after not less than the minimum period as is customarily required for the settlement or delivery of Equivalent Securities of the relevant kind.

### 3. LOAN OF SECURITIES

In relation to each Transaction, the Lender will lend the Securities to the Borrower and the Borrower will borrow the Securities from the Lender on the Delivery Date subject to and in accordance with the terms and conditions of this Agreement.

### 4. DELIVERY OF SECURITIES

On a Delivery Date for a Transaction, the Lender shall deliver the Securities or procure the delivery of the Securities to the Borrower TOGETHER WITH appropriate instruments of transfer duly stamped where necessary and such other instruments as may be requisite to vest title thereto in the Borrower. The Securities shall be deemed to have been delivered by the Lender to the Borrower on delivery to the Borrower or as it shall direct of the relevant instruments of transfer.

### 5. RIGHTS AND TITLE

The Parties shall execute and deliver all necessary documents and give all necessary instructions to procure that all right title and interest in:

- (i) the Securities borrowed pursuant to Clause 2; and
- (ii) the Equivalent Securities redelivered pursuant to Clause 6;

shall pass from one Party to the other subject to the terms and conditions mentioned herein on delivery or redelivery of the same in accordance with this Agreement, free from all liens, charges and encumbrances. In the case of the Securities or Equivalent Securities, title to which is registered in a computer based system which provides for the recording and transfer of title to the same by way of book entries, delivery and transfer of title shall take place in accordance with the rules and procedures of such system as in force from time to time. The Party acquiring such right, title and interest shall have no obligation to return or redeliver any of the assets so acquired but, insofar as the Securities are borrowed, such Party shall be obliged, subject to the terms of this Agreement, to redeliver Equivalent Securities.

### 6. REDELIVERY OF EQUIVALENT SECURITIES

Subject to the provisions of Clause 9 below, the Borrower undertakes in relation each Transaction to redeliver Equivalent Securities to the Lender on the Redelivery Date for that Transaction or, if that Transaction is an Open Transaction on the date falling two Business Days immediately following the date on which the Borrower receives from the Lender a written notice requiring the termination of that Transaction. The delivery of such Equivalent Securities shall be effected in the same manner as set out in Clause 3 above.

### 7. LENDING FEES

On the Redelivery Date for each Transaction, the Borrower shall pay to the Lender the Lending Fee for that Transaction.

### COLLATERAL

The Borrower undertakes in relation to each Transaction to pay to the Lender the applicable Cash Collateral Amount on the Delivery Date, which sum shall be held by the Lender until Equivalent Securities (in respect of the Securities borrowed under the relevant Transaction) are

redelivered by the Borrower. Subject to Clause 9 below, the Cash Collateral Amount shall be repaid at the same time as Equivalent Securities in respect of the relevant Securities borrowed are redelivered. If the Borrower fails to comply with its obligation for such redelivery of Equivalent Securities, then the Lender shall have the right to apply the Cash Collateral Amount by way of set-off against the cash equivalent value of such obligation in accordance with Clause 9 below. Interest shall accrue on the Cash Collateral Amount for the term of each Transaction at the applicable Interest Rate (compounded, if applicable, on an annual basis) and shall be due and payable on the Redelivery Date.

#### 9. ACCELERATION DUE TO EVENT OF DEFAULT

If either an Event of Default occurs in relation to either Party, then the Redelivery Date for each Transaction shall be deemed to occur at the time such Event of Default occurs and the performance of any other obligations that the Parties may have under this Agreement at such time shall likewise be accelerated. In such an event and with immediate effect on the relevant date (the "Acceleration Date"), the redelivery obligation of the Borrower shall be replaced with an obligation of the Borrower to pay to the Lender on the Acceleration Date an amount equal to the then prevailing market value of the Equivalent Securities (as determined by reference to the official closing price(s) on such date) in respect of which such redelivery obligation had existed. Such payment obligation may be then set-off against the payment obligation of the Borrower with respect to the return of the Cash Collateral Amount and accrued interest thereon.

#### 10. INCOME PAYMENTS

Unless otherwise agreed, when the term of a particular Transaction extends over an Income Payment Date in respect of any Securities subject to that Transaction, the Borrower shall on the date of such Income is paid by the issuer transfer to or credit to the account of the Lender an amount equal to (and in the same currency as) the amount paid by the issuer, such payment to be made without any withholding or deduction for or on account of any taxes or duties notwithstanding that a payment of such Income may be subject to such a withholding or deduction.

#### 11. LENDER'S WARRANTIES

The Lender hereby warrants and undertakes to the Borrower on a continuing basis to the intent that such warranties shall survive the completion of any transaction contemplated herein that:

- (A) it is duly authorised and empowered to perform its duties and obligations under this Agreement;
- (B) it is not restricted under the terms of its constitution or in any other manner from lending the Securities in accordance with this Agreement or from otherwise performing its obligations hereunder;
- (C) it is absolutely entitled to pass full legal and beneficial ownership of the Securities to the Borrower free from all taxes, charges and encumbrances;

#### 12. BORROWER'S WARRANTIES

The Borrower hereby warrants and undertakes to the Lender on a continuing basis to the intent that such warranties shall survive the completion of any transaction contemplated herein that:

- (A) it has all necessary licences and approvals, and is duly authorised and empowered, to perform its duties and obligations under this Agreement and will do nothing prejudicial to the continuation of such authorisation, licences or approvals;
- (B) it is not restricted under the terms of its constitution or in any other manner from borrowing Securities in accordance with this Agreement or from otherwise performing its obligations hereunder;
- (C) it is acting as principal in respect of this Agreement;

### 13. EVENTS OF DEFAULT

Each of the following events occurring in relation to either Party (the "Defaulting Party", the other Party being the "Non-Defaulting Party") shall be an Event of Default for the purpose of Clause 9:

- (A) the Lender or Borrower failing to comply in any material respect with its obligations under Clauses 2, 3, 4 or 5, and the Non-Defaulting Party serves written notice on the Defaulting Party and the Defaulting party fails to cure its default within the following 5 Business Days;
- (B) an Act of Insolvency occurring with respect to the Lender or the Borrower and (except in the case of an Act of Insolvency which is the presentation of a petition for winding-up or any analogous proceeding or the appointment of a liquidator or analogous officer of the Defaulting Party in which case no such notice shall be required) the Non-Defaulting Party serves written notice on the Defaulting Party;
- (C) any representations or warranties made by the Lender or the Borrower being incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, and the Non-Defaulting Party serves written notice on the Defaulting Party;
- (D) the Lender or the Borrower admitting to the other that it is unable to, or it intends not to, perform any of its obligations hereunder and/or in respect of any loan hereunder, and the Non-Defaulting Party serves written notice on the Defaulting Party;
- (E) the Lender (if appropriate) or the Borrower being suspended or expelled from membership or participation in any securities exchange or association or other self-regulatory organisations or suspended from dealing in securities by any government agency, and the Non-Defaulting Party serves written notice on the Defaulting Party;
- (F) any of the assets of the Lender or the Borrower or the assets of investors held by or to the order of the Lender or the Borrower being transferred or ordered to be transferred to a trustee by a regulatory authority pursuant to any securities regulating legislation and the Non-Defaulting Party serves written notice on the Defaulting Party; or
- (G) the Lender or the Borrower failing to perform any other of its material obligations hereunder and not remedying such failure within 30 days after the Non-Defaulting Party serves written notice reminding it to remedy such failure, and the Non-Defaulting Party serves a further written notice on the Defaulting Party.

Each Party shall notify the other if an Event of Default occurs in relation to it.

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14. ASSIGNMENT

Neither Party may charge, assign or transfer all or any of its rights or obligations hereunder without the prior consent of the other Party.

15. GOVERNING LAW

This Agreement is governed by and shall be construed in accordance with, the laws of England and each Party irrevocably submits to the exclusive jurisdiction of the English courts.

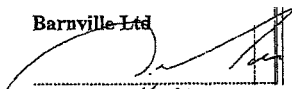
IN WITNESS WHEREOF this Agreement has been executed on behalf of the Parties hereto the day and year first before written.

Jackstones Ltd



Name: David Murray  
Title: Director  
Date:

Barnville Ltd



Name: David Murray  
Title: Director  
Date:

8

1112

ANNEX

Form of Confirmation

To: \_\_\_\_\_  
From: \_\_\_\_\_  
Date: \_\_\_\_\_  
Subject: Transaction (Reference Number: \_\_\_\_\_)

Dear Sirs,

The purpose of this [letter]/[facsimile]/[telex] is to set forth the terms and conditions of the above repurchase transaction entered into between us on the Trade Date referred to below.

This Confirmation supplements and forms part of and is subject to the Securities Lending Agreement as entered into between us as of 28 December 1999 as the same may be amended from time to time (the "Agreement"). All provisions contained in the Agreement govern this Confirmation except as expressly modified below. Words and phrases defined in the Agreement and used in this Confirmation shall have the same meaning herein as in the Agreement.

7. Trade Date:
8. Securities:
9. CUSIP, CINS or other identifying number:
10. Borrower:
11. Lender:
12. Delivery Date:
13. Redelivery Date [if not Open Transaction]:
14. Cash Collateral Amount:
15. Interest Rate:
16. Lending Fee:
17. Lender's Bank Account[s] [Details]:
18. [Additional Terms]:

Yours faithfully,

\_\_\_\_\_

9

## ANNEX

## Form of Confirmation

To: Jackstones Ltd  
 From: Barnville Ltd  
 Date: 28 December 1999  
 Subject: Stock Loan of Technology Share Basket [Tranche 1]

Dear Sirs,

The purpose of this letter is to set forth the terms and conditions of the above repurchase transaction entered into between us on the Trade Date referred to below. This Confirmation supplements and forms part of and is subject to the Securities Lending Agreement as entered into between us as of 28 December 1999 as the same may be amended from time to time (the "*Agreement*"). All provisions contained in the Agreement govern this Confirmation except as expressly modified below. Words and phrases defined in the Agreement and used in this Confirmation shall have the same meaning herein as in the Agreement.

1. Trade Date: 28 December 1999
2. Securities: See attached Schedule A
3. RIC Code: See attached Schedule A
4. Borrower: Jackstones Ltd
5. Lender: Barnville Ltd
6. Delivery Date: 3 January 2000
7. Redelivery Date: This transaction will be an "Open Transaction" for the purposes of the Agreement
8. Lending Fee: Nil
9. Cash Collateral Amount: USD 397,201,727
10. Additional Terms: Notwithstanding Clause 9 of the Agreement, the Borrower shall not be liable to account to the lender for any income that may arise during the

Permanent Subcommittee on Investigations

EXHIBIT #51g

PSI-QUEL 26618

*Director.*



**Schedule A**

Security	RIC Code	Number of Shares	Market Close 28 Dec 1999	Security Valuation
Commerce One	CMRC.O	357,143	250.0000	89,285,750
Dell Computer	DELL.O	1,923,077	51.5600	99,153,850
eBay	EBAY.O	769,231	139.8700	107,592,340
MCI-Worldcom	WCOM.O	1,257,861	80.43	101,169,787
		<b>4,307,312</b>		<b>397,201,727</b>

**ANNEX****Form of Confirmation**

To: Jackstones Ltd  
 From: Barnville Ltd  
 Date: 03 January 2000  
 Subject: Black Lane of Technology Share Basket [Tranche 2]

Dear Sirs,

The purpose of this letter is to set forth the terms and conditions of the above repurchase transaction entered into between us on the Trade Date referred to below. This Confirmation supplements and forms part of and is subject to the Securities Lending Agreement as entered into between us as of 28 December 1999 as the same may be amended from time to time (the "*Agreement*"). All provisions contained in the Agreement govern this Confirmation except as expressly modified below. Words and phrases defined in the Agreement and used in this Confirmation shall have the same meaning herein as in the Agreement.

1. Trade Date: 3 January 2000
2. Securities: See attached Schedule A
3. RIC Code: See attached Schedule A
4. Borrower: Jackstones Ltd
5. Lender: Barnville Ltd
6. Delivery Date: 6 January 2000
7. Redelivery Date: This transaction will be an "Open Transaction" for the purposes of the Agreement
8. Lending Fee: Nil
9. Cash Collateral Amount: USD 1,648,791,354
10. Additional Terms: Notwithstanding Clause 9 of the Agreement, the Borrower shall not be liable to account to the lender for any income that may arise during the

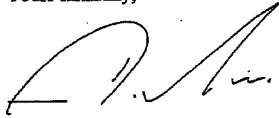
Permanent Subcommittee on Investigations

**EXHIBIT #51h**

PSI-QUEL 26621

term of the Transaction on any of the Securities.

Yours faithfully,

A handwritten signature in black ink, appearing to be "D. A. M.", written in a cursive style.

**Schedule A**

Security	RIC Code	Number of Shares	Market Close 03 Jan 2000	Security Valuation
Amazon.com	AMZN.O	1,136,364	89.37	101,556,851
America On-Line	AOL.N	1,250,000	82.75	103,437,500
Broadvision	BVSN.O	546,448	189.43	103,513,645
Clear Channel	CCU.N	1,123,596	87.75	98,595,549
CMGI	CMGI.O	322,580	326.44	105,303,178
DoubleClick	DCLK.O	390,625	268.00	104,687,500
Gateway	GTW.N	1,423,488	69.37	98,747,363
Global Crossing	GBLX.O	2,083,333	49.12	102,333,317
I2 Technologies	ITWO.O	568,182	188.50	107,102,307
Internet Capital Group	ICGE.O	534,759	200.00	106,951,800
Liberty Digital	LDIG.O	1,538,462	70.12	107,876,955
Lucent Technology	LU.N	1,315,789	77.12	101,473,648
Qualcom	QCOM.O	568,182	179.31	101,880,714
QWest Communications	Q.N	2,339,181	42.12	98,526,304
Verisign	VRSN.O	526,316	190.12	100,063,198
Yahoo!	YHOO.O	224,719	475.00	106,741,525
		<b>15,892,024</b>		<b>1,648,791,354</b>

## ANNEX

## Form of Confirmation

JACKSTONES LTD  
 JACKSTONES LTD  
 10 January 2000  
 Jackstones Technology Share Basket (Tranche 3)

Dear Sirs,

The purpose of this letter is to set forth the terms and conditions of the above repurchase transaction entered into between us on the Trade Date referred to below. This Confirmation supplements and forms part of and is subject to the Securities Lending Agreement as entered into between us as of 28 December 1999 as the same may be amended from time to time (the "Agreement"). All provisions contained in the Agreement govern this Confirmation except as expressly modified below. Words and phrases defined in the Agreement and used in this Confirmation shall have the same meaning herein as in the Agreement.

- |     |                         |   |
|-----|-------------------------|---|
| 1.  | Trade Date:             | 10 January 2000   |
| 2.  | Securities:             | See attached Schedule A   |
| 3.  | RIC Code:               | See attached Schedule A   |
| 4.  | Borrower:               | Jackstones Ltd  |
| 5.  | Lender:                 | Barnville Ltd   |
| 6.  | Delivery Date:          | 13 January 2000   |
| 7.  | Redelivery Date:        | This transaction will be an "Open Transaction" for the purposes of the Agreement  |
| 8.  | Lending Fee:            | Nil   |
| 9.  | Cash Collateral Amount: | USD 1,160,339,562   |
| 10. | Additional Terms:       | Notwithstanding Clause 9 of the Agreement, the Borrower shall not be liable to account to the lender for any income that may arise during the |

Permanent Subcommittee on Investigations

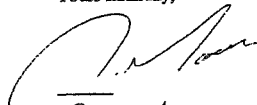
EXHIBIT #51i

PSI-QUEL 26624

1120

term of the Transaction on any of the Securities.

Yours faithfully,

  
DIRECTOR

PSI-QUEL 26625

Schedule A

Security	RIC Code	Number of Shares	Market Close 10 Jan 2000	Security Valuation
Ariba Inc	ARBA.O	540,541	194.00	104,864,954
AtHome Inc	ATHM.O	2,484,472	40.25	99,999,998
BEA Systems	BEAS.O	1,307,190	84.00	109,803,960
Broadcom	BRCM.O	340,136	295.56	100,530,596
Exodus Communications	EXDS.O	980,392	104.00	101,960,768
Infospace	INSP.O	881,057	114.50	100,881,027
JDS Uniphase	JDSU.O	510,204	200.37	102,229,575
Juniper Networks	JNPR.O	104,493	325.50	34,012,580
Network Applications	NTAP.O	1,123,596	88.62	99,573,078
PMCS	PMCS.O	619,195	164.50	101,857,578
Veritas Software	VRTS.O	709,220	143.81	101,992,928
Vignette Corporation	VIGN.O	540,541	189.87	102,632,520
		10,141,037		1,160,339,562

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7-JUL-00-Fri 17:21 +44-1624-620588

FAX NO.

P. 5 0005

# ANNEX

## Form of Confirmation

To: Jackstones Ltd  
From: Barnville Ltd  
Date: 28 February 2000  
Subject: Stock Loan of Technology Share Basket

Dear Sirs,

The purpose of this letter is to set forth the terms and conditions of the above repurchase transaction entered into between us on the Trade Date referred to below. This Confirmation supplements and forms part of and is subject to the Securities Lending Agreement as entered into between us as of 28 December 1999 as the same may be amended from time to time (the "Agreement"). All provisions contained in the Agreement govern this Confirmation except as expressly modified below. Words and phrases defined in the Agreement and used in this Confirmation shall have the same meaning herein as in the Agreement.

- |                            |   |
|----------------------------|---|
| 1. Trade Date:             | 28 February 2000  |
| 2. Securities:             | See attached Schedule A   |
| 3. RIC Code:               | See attached Schedule A   |
| 4. Borrower:               | Jackstones Ltd  |
| 5. Lender:                 | Barnville Ltd   |
| 6. Delivery Date:          | 2 March 2000  |
| 7. Redelivery Date:        | This transaction will be an "Open Transaction" for the purposes of the Agreement  |
| 8. Lending Fee:            | Nil   |
| 9. Cash Collateral Amount: | USD 3,399,999,848   |
| 10. Additional Terms:      | Notwithstanding Clause 9 of the Agreement, the Borrower shall not be liable to account to the lender for any income that may arise during the |

Permanent Subcommittee on Investigations  
EXHIBIT #51j

18:21 [TX/RX NO 5875] 0005

PSI-QUEL 26627



20/09 '00 WED 15:50 FAX

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term of the Transaction on any of the Securities.

Yours faithfully,

A handwritten signature in dark ink, appearing to be a stylized 'A' or 'M' followed by a horizontal line.

PSI-QUEL 26628

1124

Schedule A

PSI-QUEL 26629

## STOCK PORTFOLIO

## Tranche 2

Symbol	Stock	Business	Trade Date	Shares		Trade Price	Market Value	Weighting
				Traded				
1	AMZN	Amazon	29-Feb-00	1,520,913		65.7500	100,000,030	2.9%
2	AOL	America Online	29-Feb-00	1,649,485		60.6250	100,000,028	2.9%
3	ARBA	Ariba Inc	29-Feb-00	367,309		272.2500	99,999,875	2.9%
4	ATHM	At Home - Inc	29-Feb-00	2,996,255		33.3750	100,000,011	2.9%
5	BEAS	Bea Systems	29-Feb-00	827,301		120.8750	100,000,008	2.9%
6	BGEN	Biogen Inc	29-Feb-00	953,516		104.8750	99,999,991	2.9%
7	BRCM	Broadcom	29-Feb-00	550,964		181.5000	99,999,966	2.9%
8	BVSN	Broadvision	29-Feb-00	429,069		233.0625	99,999,894	2.9%
9	CNDT	Conexant Systems	29-Feb-00	1,032,924		96.8125	99,999,935	2.9%
10	COMS	3Com Corp	29-Feb-00	1,264,822		79.0625	99,999,989	2.9%
11	CSCO	Cisco Systems	29-Feb-00	765,917		130.5625	100,000,038	2.9%
12	CTXS	Citrix Systems	29-Feb-00	970,285		103.0625	99,999,998	2.9%
13	EBAY	EBAY	29-Feb-00	689,358		145.0625	99,999,995	2.9%
14	EMC	EMC corp/Mass	29-Feb-00	847,458		118.0000	100,000,044	2.9%
15	ETEK	E-tek Dynamics	29-Feb-00	386,100		259.0000	99,999,900	2.9%
16	EXDS	Exodus Comm.	29-Feb-00	747,664		133.7500	100,000,060	2.9%
17	GBLX	Global Crossing	29-Feb-00	2,168,022		46.1250	100,000,015	2.9%
18	GTW	Gateway	29-Feb-00	1,438,849		69.5000	100,000,006	2.9%
19	IMNX	Immunex	29-Feb-00	524,246		190.7500	99,999,925	2.9%
20	INSP	Infospace	29-Feb-00	458,453		218.1250	100,000,061	2.9%
21	ITWO	I2 Technologies	29-Feb-00	590,842		169.2500	100,000,009	2.9%
22	JDSU	JDS Uniphase	29-Feb-00	395,257		253.0000	100,000,021	2.9%
23	JNFR	Juniper Networks	29-Feb-00	436,562		229.0625	99,999,983	2.9%
24	MPNX	Metromedia Fiber	29-Feb-00	1,327,801		75.3125	100,000,013	2.9%
25	NTAP	Network Appliance	29-Feb-00	549,478		184.0000	99,999,952	2.9%
26	PMCS	PMCS	29-Feb-00	559,441		178.7500	100,000,079	2.9%
27	Q	QWEST	29-Feb-00	2,173,913		46.0000	99,999,998	2.9%
28	QCOM	Qualcom	29-Feb-00	698,080		143.2500	99,999,960	2.9%
29	QLGC	Qlogic	29-Feb-00	706,090		141.6250	99,999,996	2.9%
30	RNWK	RealNetworks Inc	29-Feb-00	1,349,863		73.0000	99,999,999	2.9%
31	VIGN	Vignette Corp	29-Feb-00	443,828		225.3125	99,999,996	2.9%
32	VRSN	Verisign	29-Feb-00	406,401		246.0625	100,000,046	2.9%
33	VRTS	Veritas	29-Feb-00	531,738		188.0625	99,999,978	2.9%
34	XLNX	Xilinx Inc	29-Feb-00	1,423,488		70.2500	100,000,032	2.9%
Totals:					<u>32,195,692</u>		<u>3,399,999,848</u>	<u>100.0%</u>

18/09 '00 TUE 18:54 FAX

0014

## ANNEX

## Form of Confirmation

To: Jackstones Ltd  
 From: Barnville Ltd  
 Date: 6 June 2000  
 Subject: Stock Loan of Technology Share Basket

Dear Sirs,

The purpose of this letter is to set forth the terms and conditions of the above repurchase transaction entered into between us on the Trade Date referred to below. This Confirmation supplements and forms part of and is subject to the Securities Lending Agreement as entered into between us as of 28 December 1999 as the same may be amended from time to time (the "Agreement"). All provisions contained in the Agreement govern this Confirmation except as expressly modified below. Words and phrases defined in the Agreement and used in this Confirmation shall have the same meaning herein as in the Agreement.

1. Trade Date: 6 June 2000
2. Securities: See attached Schedule A
3. RIC Code: See attached Schedule A
4. Borrower: Jackstones Ltd
5. Lender: Barnville Ltd
6. Delivery Date: 9 June 2000
7. Redelivery Date: This transaction will be an "Open Transaction" for the purposes of the Agreement
8. Lending Fee: Nil
9. Cash Collateral Amount: USD 3,000,154,375
10. Additional Terms: Notwithstanding Clause 9 of the Agreement, the Borrower shall not be liable to account to the lender for any income that may arise during the

Permanent Subcommittee on Investigations

EXHIBIT #51k

PSI-QUEL 26631

12/09 '00 TUE 16:54 FAX

015

term of the Transaction on any of the Securities.

Yours faithfully,

A handwritten signature in dark ink, appearing to be "D. A.", written over a vertical dashed line.

PSI-QUEL 26632

19/09 '00 TUE 18:54 FAX

018

		Number of Shares	Trade Price in USD	Purchase Price in USD
Adobe Systems Inc	ADEE	864,000	115.6875	99,954,000
	ADCT	1,418,000	70.5000	99,969,000
ADC Telecommunications Inc	AMAT	1,120,000	89.3125	100,030,000
Applied Materials Inc	AMCC	936,000	106.8125	99,976,500
Applied Micro Circuits Inc	AUD	1,733,000	57.6875	99,972,438
Automatic Data Processing	BRCD	720,000	138.8750	99,990,000
Brocade Communication Systems	BRCM	641,000	156.0000	99,996,000
Broadcom Corp - Class A	CSCO	1,631,000	61.3125	100,000,688
Cisco Systems	DELL	2,238,000	44.6875	100,010,625
Dell Computer	EBAY	1,393,000	71.8125	100,034,813
	BMC	1,538,000	65.0000	99,970,000
EBAY Inc	ETEK	440,000	227.1250	99,935,000
EMC Corp	FDC	1,833,000	54.5625	100,013,063
E-Tek Dynamics Inc	INSP	2,010,000	49.7500	99,997,500
First Data Corp	JDSU	935,000	107.0000	100,045,000
InfoSpace Inc	JNPR	497,000	201.3750	100,083,375
JDS Uniphase Corp	MPNX	2,740,000	36.5000	100,010,000
	MU	1,298,000	77.0625	100,027,125
Juniper Networks Inc	NOK	1,798,000	55.6250	100,013,750
Metromedia Fiber Networks A	NTAP	1,354,000	73.8750	100,026,750
Micron Technology Inc	NXLK	1,232,000	81.1875	100,023,000
	ORCL	1,298,000	77.0625	100,027,125
Nokia Corp - Spon ADR	PCS	1,756,000	56.9375	99,982,250
Network Appliance Inc	PMCS	556,000	180.0000	100,080,000
Nextlink Communications - A	SDLI	392,000	255.0000	99,960,000
Oracle Corporation	SUNW	1,192,000	83.8750	99,979,000
Sprint Corp (PCS Group)	TER	1,087,000	92.0000	100,004,000
PMC-Sierra Inc	VRTS	2,484,000	40.2500	99,981,000
SDL Inc	VIGN	801,000	124.8750	100,024,875
Sun Microsystems Inc	XLNX	1,208,000	82.8125	100,037,500
Teradyne Inc		39,143,000		\$ 3,000,154,375
Veritas Software Corp				

PSI-QUEL 26633

From: Chuck Wilk  
Sent: Thursday, April 06, 2000 10:18 AM  
To: Christopher Hirata  
Subject: FW: Point

-----Original Message-----  
From: John Staddon [mailto:john.staddon@euraminvest.com]  
Sent: Thursday, April 06, 2000 3:31 AM  
To: Chuck Wilk  
Cc: Rajan Puri  
Subject: RE: Point

Chuck,

We will set aside all of tomorrow (Friday) afternoon to go through your comments (this afternoon/evening is too congested to give this the time that I reckon it will need). If you want to send over any written queries or comments ahead of then, please do so.  
Cheers,  
John

-----Original Message-----  
From: Chuck Wilk [mailto:ChuckW@gcm.com]  
Sent: Wednesday, April 05, 2000 7:25 PM  
To: 'John Staddon'  
Subject: RE: Point

John,

Chris Hirata and I have been through the documents and have numerous questions and comments. At your convenience, we need to schedule a call to review. Please contact Chris (206-613-6723) or me (206-613-6751).

Thanks,  
Chuck

-----Original Message-----  
From: John Staddon [mailto:john.staddon@euraminvest.com]  
Sent: Tuesday, April 04, 2000 11:46 AM  
To: Chuck Wilk  
Subject: RE: Point

I obviously understand Lew's approach, but there is a commercial risk that both you and I know only too well and that is that the client turns round under a certain scenario and claims to have been misled as to the nature of the share trading between the two IoM companies. Speaking for Euram, we either need to know that the client and its advisors are aware of how the share trades are entered into or, if this is not possible, then we need to understand how it is that there will be no possible come back from the client at a later stage if everything does not go to plan.

Timing sound fine from this side. I will put together a draft checklist in contemplation of this. In the meantime, could you send me a copy of Lew's opinion for the file.

Permanent Subcommittee on Investigations  
**EXHIBIT #52a**

1130

Thanks,  
John

-----Original Message-----  
From: Chuck Wilk [mailto:ChuckW@gcm.com]  
Sent: Tuesday, April 04, 2000 7:21 PM  
To: 'John Staddon'  
Subject: RE: Point

John,

Client ready to proceed on or about 4/15. Lew Steinberg does not address the share exchange in his opinion because according to him the client should not know how the shares were contributed to the SPV. The client is introduced to the "product" (i.e. the HYPO structure) and purchases it as a high yield investment.

What do you think is left to be done to execute a sale of the SPV on 4/15? Should we produce a pre-closing checklist?

Thanks,  
Chuck

-----Original Message-----  
From: John Staddon [mailto:john.staddon@euraminvest.com]  
Sent: Tuesday, April 04, 2000 11:14 AM  
To: chuckW@gcm.com  
Cc: Rajan Puri  
Subject: Point

Chuck,

Jeff tells me that you are due to have the client meeting today and I hope that all goes well. I imagine that you will have a good feel for timing coming out of it and so I will expect a firm indication from you over the next 24hrs as to when you will want to pull the trigger.

Also to that end, I know that Chris has already discussed with Jeff the matter of us needing sight of the opinion being issued in connection with the structure and, if not dealt with in the opinion, an assurance that the client is fully apprised of the nature of the share trading between the two Isle of Man companies. Perhaps you could let me know when we can get sight of something.

Thanks,

John



From: Jeff Greenstein  
 Sent: Friday, April 28, 2000 7:52 AM  
 To: 'John Staddon'  
 Subject: RE: [REDACTED] trade

[REDACTED] = Redacted by the Permanent  
 Subcommittee on Investigations



zikhals.xls

John - sorry the portfolio didn't come through. Attached is a file that has the stocks and approximate quantities. I will give you a call shortly to review.

-----Original Message-----

From: John Staddon [mailto:john.staddon@euraminvest.com]  
 Sent: Friday, April 28, 2000 4:43 AM  
 To: Jeff Greenstein; Chuck Wilk  
 Cc: Rajan Puri  
 Subject: RE: [REDACTED] trade  
 Importance: High

Jeff,

Jeff/ Chuck

The portfolio details were not attached. Please send over asap and Jeff could you confirm which tranche the shares derive from (i.e. the first tranche of 28/12/99, 03/01/00 and 28/01/00 or the second tranche of 28/02/00).

I assume that we are looking to execute for [REDACTED] today. On that basis:

(a) the call spread and option collars will have an expiry date of 7 August 2000 (by our reckoning) and, assuming a three business day settlement period, the cash settlement will of the options arises on 10 August. 10 August will also be the date on which the deferred consideration becomes payable. Please confirm that this is the basis on which the BoA options will be traded.

(b) the call spread will be traded at some point during the NY business day;

(c) I will get faxed signatures for the various documents and send them to you via fax (the agreements allow for counterparts).

(d) I will arrange for hard copy originals to be circulated early next week (once we have hard numbers as well).

Some other factors to note:

1. I still need the names of the [REDACTED] entities.
2. Instead of using Reka, I have set up another Isle of Man company for [REDACTED] (details of which I have faxed to Chris Hirata) - it is called Torens Limited.
3. The bank account details that I sent you over Chuck yesterday for Barnville needs to refer to "TRISKOUSD1" rather than "EUROTCOUSD1".
4. For the purposes of calculating our fee, please confirm that the structure size.

Permanent Subcommittee on Investigations

EXHIBIT #52b

PSI-QUEL 10704

Finally, I know that we discussed this for Woody and his trades, but I also need confirmation from you that [REDACTED] and/or his advisers is aware of the book entry features of the structure.

Thanks,  
John

-----Original Message-----

From: Jeff Greenstein [mailto:jeffg@qcm.com]  
Sent: Friday, April 28, 2000 4:51 AM  
To: 'John Staddon'  
Cc: Chuck Wilk  
Subject: [REDACTED] trade

John - in preparing the draft documents I have enclosed some approximate facts that will likely change slightly prior to execution:

Stock Basket:

<<...>>

Total fair value of purchase: 91,796,000

Option Prices & terms:

100 day European cash settled options:

100% put: 13,530,859  
108% call: 11,382,813

Pre-paid interest and fees: 1,850,000

Obviously the cost of the call spread will equal the combination of the pre-paid interest and the net debit on the options. This amount will be forward to Bank of America. A similar e-mail will be prepared for Woody's trade. I will speak with you in the morning but this should provide for you to start preparing the documents. Jeff

NOV 16 2004 15:18 FROM THE JOHNS

TO 00242040213000200 P.04

WOODGLEN I LLC  
 c/o The Johnson Company Inc.  
 630 Fifth Avenue  
 Suite 1510  
 New York, NY 10011

October 27, 2004

Mr. Jeff Greenstein  
 Quellos Group LLC  
 667 Madison Avenue  
 25<sup>th</sup> Floor  
 New York, NY 10021

Re: Reka Limited

Dear Mr. Greenstein:

As you know, the Internal Revenue Service is currently examining the transaction on which Quellos advised relating to our purchase of Reka Limited ("Reka"). As you recall, the transaction involved the purchase of a certain portfolio of securities by Barnville Limited an Isle of Man company ("Barnville") from Jackstones Limited, an Isle of Man company ("Jackstones") and the subsequent contribution of that portfolio to Reka.

In Information Document Request No. 8 dated May 3, 2004, which we previously provided to Quellos on June 9, 2004, the Internal Revenue Service requested information to support the tax basis of Reka in the portfolio. A copy of the Information Document Request is attached.

In particular, in question number 1, the Internal Revenue Service requested "evidence showing transfers of funds from Barnville to Jackstones and transfer of the shares from Jackstones to Barnville".

Please provide us with documentation and substantiation of the payment by Barnville to Jackstones of \$248,844,063 for the portfolio contributed to Reka.

In addition, as requested by the Internal Revenue Service, please provide us with substantiation and documentation of the transfer of the portfolio shares from Jackstones to Barnville and subsequently from Barnville to Reka. We understand from our representatives, that Quellos has indicated that no actual shares may have been transferred. If that is the case, please provide us with a letter containing a detailed step by step explanation of the substance of the transaction beginning with the Barnville's purchase through the sale of the portfolio by Reka to Jackstones and explain the nature of the property purchased and sold.

0242040213-002 NYLIB1/1846828v1

Permanent Subcommittee on Investigations

EXHIBIT #53a

PSI-RWJ 000395

P.4/7

R19H UFRX

NOV-16-2004 15:18 FROM THE JOHNS

Sincerely yours,

NOV-16-2004 15:18 From: THE JOHNSON COMPANY 2123327510  
To: R19h1fAX P.5/7

11/16/2004 13:25 FAX

STEPTOE &amp; JOHNSON

002

11/15/2004 13:05 206-513-1851

QUELLOS GROUP

PAGE 82/87



November 15, 2004

Woodglen I, LLC  
 Woodglen I, Inc.  
 c/o The Johnson Company, Inc.  
 630 Fifth Avenue  
 Suite 1510  
 New York, NY 10011

Gentlemen:

We are writing in response to your letter dated October 27, 2004 that we received by facsimile.

Paragraph four of your letter requested documentation of payment between Barnville and Jackstones. We are not in possession of such documentation. Quellos was never affiliated with, related to or in control of either Barnville or Jackstones. Previously (during the time period of the transaction), we requested certain documents relating to your transaction from Barnville and Jackstones and provided the copies we received in response to your counsel, whom we understand has forwarded those to the Service.

In Paragraph five you requested documentation of the transfer of portfolio shares from Jackstones to Barnville and Barnville to Burgundy. These documents have also previously been provided to your counsel, and, we understand, forwarded to the Service. Please let us know if you want us to provide copies to you. Paragraph five further states, "We understand from our representatives, that Quellos has indicated that no actual shares may have been transferred." That is not what we indicated. What was stated was that we believe from the documents we have reviewed that the referenced transactions were OTC contracts, and, therefore, there were probably no exchange traded transactions of the shares. In response to your request in Paragraph five to provide a step-by-step explanation of the transactions we have included such letter. However, we reiterate that we were not party to the original transactions (Purchase Agreements and Securities Lending Agreements) between Barnville and Jackstones, and, therefore, this part of our step-by-step explanation is based on documentation we have reviewed.

We hope that this letter and the letter detailing the step-by-step explanation are satisfactory for the purposes you intend.

Regards,

Charles H. Wilk

801 Union Street, 30th Floor • Seattle, WA 98101

Tel 206.413.6700 • Fax 206.413.6713

quellos.com

Permanent Subcommittee on Investigations

EXHIBIT #53b

PSI-RWJ 000397

11/16/2004 13:25 FAX

11/15/2004 13:05

206-613-1851

STEPTOE &amp; JOHNSON

QUELLOS GROUP

003

PAGE 03/07



November 15, 2004

Woodglen I, LLC  
 Woodglen I, Inc.  
 c/o The Johnson Company, Inc.  
 630 Fifth Avenue  
 Suite 1510  
 New York, NY 10011

Re: Reka Limited

Gentlemen:

This responds to your recent inquiry seeking additional information regarding the transactions between Jackstones Limited, an Isle of Man company ("Jackstones"), and Barnville Limited, an Isle of Man company ("Barnville"). Your request relates to your purchase of Reka Limited ("Reka") on May 5, 2000, and the subsequent sale by Reka to Jackstones on June 5, 2000, of a certain basket of stocks (the "Basket"), as more fully described below.

We understand that the transaction involving Reka is currently under examination by the Internal Revenue Service. We further understand that in Information Document Request No. 8, dated May 3, 2004, the Internal Revenue Service requested certain information to substantiate the tax basis of Reka in the Basket at the time it was sold to Jackstones on June 5, 2000. It is important to note that Quellos has never been affiliated with, related to, or in control of either Barnville or Jackstones.

From the documents we received from Barnville and Jackstones, it appears that the transactions involved over-the-counter ("OTC") sales of rights to an underlying portfolio of stock (the "Portfolio") by Jackstones to Barnville. The Purchase Agreements between Jackstones (as seller) and Barnville (as purchaser) reflect that Jackstones sold to Barnville the right to beneficial ownership of shares comprising the Portfolio. The contract right entitled Barnville to the economic benefits and burdens equivalent to owning the shares in the Portfolio, i.e., Barnville was entitled to the benefit of any appreciation in the value of the shares in the Portfolio. Barnville also suffered the burden of any diminution in the value of the shares in the Portfolio, and Barnville was entitled to the receipt of an amount equivalent to any dividends with respect to the shares in the Portfolio.

The Purchase Agreements obligate Barnville itself to pay Jackstones an amount equal to the fair market value of the Portfolio on the purchase dates. BKR Haines Watts (the accountants for both Barnville and Jackstones) confirmed that the Purchase Agreements were properly recorded on Barnville's and Jackstones' books and records in the Isle of Man.

601 Union Street, 50th Floor • Seattle, WA 98101

tel 206.613.6700 • fax 206.613.6713

quellos.com

Permanent Subcommittee on Investigations

EXHIBIT #53c

PSI-RWJ 000398

11/16/2004 13:26 FAX

11/15/2004 13:05

206-513-1851

STEPTOE &amp; JOHNSON

GUELLOS GROUP

004

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Woodglen I, LLC  
 Woodglen I, Inc.  
 November 15, 2004  
 Page 2

Documents provided to us by Barnville and Jackstones reflect that Barnville and Jackstones entered into a Securities Lending Agreement in which Barnville loaned to Jackstones all of its rights/burdens of the Portfolio that was the subject of the Purchase Agreements. In turn, the documents reflect that Jackstones posted collateral with Barnville equal to the fair market value of the underlying Portfolio.

Pursuant to the Securities Lending Agreement, the amount of cash collateral Jackstones was required to post with Barnville fluctuated depending upon the market value of the Portfolio. For example, in the event the market value of the Portfolio declined, Jackstones' cash collateral obligation would have declined as well.

On May 5, 2000, Barnville contributed a portion of the Portfolio (the Basket) subject to the Securities Lending Agreement to Reka. In exchange for a note payable by Barnville to Reka in an amount equal to the value of the Basket, Reka also agreed to assume Barnville's obligation to return cash collateral to Jackstones at the time the Securities Lending Agreement was terminated.

At the time of the contribution of the Basket by Barnville to Reka, under a Novation Agreement to which Jackstones was a party, Jackstones agreed to waive any defenses (other than Reka's obligation to return cash collateral) to its obligation to return the securities under the Securities Lending Agreement. This assured Reka that there were no contractual obstacles to its ability to reclaim the rights/burdens of the Basket from Jackstones.

On June 5, 2000, Reka sold the Basket to Jackstones. At that time the value of the Basket was approximately \$112.27 million. This amount exceeded the \$103.94 million of cash collateral that Reka was obligated to return to Jackstones on the termination of the Securities Lending Agreement. The difference of \$8.33 million was due to Reka. This obligation was assumed by Barnville and was paid by Barnville after offsetting certain amounts owed to Barnville by Reka.

If we can be of any further assistance, please do not hesitate to let us know.

Regards,



Charles H. Wilk

PSI-RWJ 000399

SUSAN M. COLLINS, MAINE, CHAIRMAN  
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 MICHAEL D. BOPP, STAFF DIRECTOR AND CHIEF COUNSEL  
 MICHAEL L. ALEXANDER, MINORITY STAFF DIRECTOR

## United States Senate

COMMITTEE ON  
 HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
 WASHINGTON, DC 20510-6250

July 6, 2006

VIA EMAIL (John.Staddon@euramgroup.com)

Mr. John Staddon  
 Head of Structured Products  
 European American Investment Group  
 6 Duke Street, St. James's  
 London SW1Y 6BN  
 United Kingdom

Dear Mr. Staddon:

Pursuant to its authority under Senate Resolution 50, 109<sup>th</sup> Congress, Section 11(e), the U.S. Senate Permanent Subcommittee on Investigations is currently reviewing the use of tax shelters and compliance with anti-money laundering, tax and securities laws and regulations related to financial transactions by individuals and domestic and offshore entities. The Subcommittee is reviewing a series of financial transactions that took place between late 1999 and 2002. Documents related to those transactions indicate the involvement of European American Investment Group (Euram) and entities that appear to be associated with Euram such as Jackstones Limited (Jackstones), Barnville Limited (Barnville), Claycroft Limited (Claycroft), and Dalecroft Limited (Dalecroft). Because you were directly involved with these transactions, the Subcommittee staff would like to discuss the transactions and matters identified in the documents with you. This would enable the Subcommittee to understand your account of events, and of equal importance provide you with an understanding of the general issues and particular matters of most interest and concern to the Subcommittee.

Included below are a number of specific questions related to the transactions and the entities involved. It would greatly assist the Subcommittee's understanding of these transactions and establish a strong foundation for a followup discussion if you would provide answers to these questions. For the purpose of these questions, the term "Euram" includes Euram and all of its subsidiaries and affiliates.

1. Please describe the relationships that Euram has with
  - a. Barnville
  - b. Jackstones
  - c. Claycroft
  - d. Dalecroft

Permanent Subcommittee on Investigations  
**EXHIBIT #54**

EURAM 01



2. Does Euram have any ownership or other interest in, or exercise any control over

- a. Barnville
- b. Jackstones
- c. Claycroft
- d. Dalecroft

If yes, please describe that ownership, interest, or control.

3. Please identify any other individual or entity known to Euram that has any ownership, interest, or control in

- a. Barnville
- b. Jackstones
- c. Claycroft
- d. Dalecroft

and state the nature of the ownership, interest, or control.

4. With respect to the sales of securities between Jackstones and Barnville on December 28, 1999, January 3, 2000, January 10, 2000, February 28, 2000, June 6, 2000, please provide the following information:

- a. Immediately prior to the transactions, did Jackstones have ownership of all of the shares of all of the companies that were sold to Barnville in the transactions? If the answer is yes, please describe the nature of Jackstone's ownership of shares (i.e., full ownership including voting rights, right to buy shares, options, warrants, other derivatives, etc.) and the source from which Jackstones obtained the shares (i.e., the market, a third party over the counter, etc.). If Jackstones did not own the shares, what was sold to Barnville?
- b. Please describe the amount and nature of consideration paid by Barnville to Jackstones in each of the transactions.
- c. For the date of each transaction, please describe the nature and amount of Barnville's assets and liabilities apart from the securities involved in the transactions and the obligations related thereto.

5. With respect to the transactions affected under the securities lending agreement between Barnville and Jackstones dated December 28, 1999, please provide the following information:

- a. Immediately prior to each transaction, did Barnville have ownership of all of the shares of all of the companies that were loaned to Jackstones in that transaction? If the answer is yes, please describe the nature of Barnville's ownership of shares

- (i.e., full ownership including voting rights, right to buy shares, options, warrants, other derivatives, etc.) and the source from which Barnville obtained the shares (i.e., the market, a third party over the counter, etc.). If Barnville did not own the shares, what was loaned to Jackstones?
- b. Please describe the amount and nature of consideration paid by Jackstones to Barnville in each of the lending transactions.
  - c. For the date of each transaction, please describe the nature and amount of Barnville's assets and liabilities apart from the securities involved in the transactions and the obligations related thereto.
6. Documentation obtained by the Subcommittee indicates that consideration paid by Barnville to Jackstones in each of the above transactions was immediately and exactly offset against obligations and or consideration that Jackstones was paying to Barnville. Is this correct? If not, please describe the nature and amount of any funds or other value transferred between Barnville and Jackstones related to these transactions.

Thank you for your attention to this matter. Please contact me at (202) 224-9579 if you have any questions about this request.

Sincerely,

*Laura Stuber*

Laura Stuber  
Counsel to the Minority  
Permanent Subcommittee on Investigations

cc: Mr. Joseph Hanczor, General Counsel  
Pali Capital, Inc.  
650 Fifth Avenue, New York, NY 10019  
Email: Mlyons@palicapital.com

**Stuber, Laura (HSGAC)**


---

**From:** Staddon John LON [John.Staddon@euram.com]  
**Sent:** Saturday, July 15, 2006 2:52 AM  
**To:** Stuber, Laura (HSGAC)  
**Subject:** Reply to your letter  
**Attachments:** PDF\_from.pdf; PDF\_from.pdf

– PRIVATE AND CONFIDENTIAL –

Dear Ms Stuber,

With regard to your letter of July 6, 2006, I welcome the opportunity to clarify certain matters relating to the transactional activity referenced by you.

However, before addressing each of the specific questions you raise, I think it would be helpful to place into context the role that Euram played in the course of these transactions.

**Background and Euram's Role**

Euram (utilizing your definition of the term) is a financial services group, one of the businesses of which is a structured products operation that among other things provides execution services for third party transactions. Soon after its inception in late 1999, Euram was approached by the Quellos organization to provide such services for a transactional structure Quellos had developed with US counsel and which it had expected to implement with its own client base. Specifically, the structure in question (which was generically referred to by Quellos as the "Point" strategy) involved the deployment of two offshore entities which would engage in a mutual trading program relating to US publicly traded securities (discussed more fully below). This would form the setting for a series of subsequent transactions involving Quellos clients for whom we understood various advantages, including those of a tax nature, were purportedly available as a result.

It bears stating at the outset that Euram had no involvement in the structure's conceptual development and played no part in determining the technical feasibility of the proposed structure or advising or assisting Quellos to that effect. Euram did not market the proposed transaction to any potential investor and in fact never had any contact with any that participated in the structure. Euram relied upon Quellos for assurances that the structure met U.S. tax, legal, and reporting requirements.

Be that as it may, Euram did assist Quellos in acting as the interface with Barnville and Jackstones, both in relation to the initial trading activity and in connection with the subsequent actions of those companies with Quellos clients. In so doing, Euram acted solely on directions of Quellos, including the content and timing of all trading activity and the subsequent transactional steps involving Quellos clients.

Euram also assisted Quellos in the production of draft documentation for some aspects of the structure which we understand were presented to clients in connection with any transaction.

**Reply to Questions**

Adopting the same formulation as in your letter:

1. Euram had no direct relationship with any of these entities. Euram was involved in seeking the

EURAM 04

services of a third party corporate administrator with suitable contacts in the Isle of Man who obtained the use of Barnville and Jackstones for the trading activity in question. Claycroft and Dalecroft are known to us as companies that were typically used by the Isle of Man administrator (Treskillion Trust Company) as holders of subscriber shares for newly formed entities.

1. Euram has no and has never had any ownership interest in any of these entities. Nor did Euram control any of them. On one occasion Euram did obtain a power of attorney from the directors of Barnville and Jackstones to execute certain transaction documents on their behalf outside of Isle of Man working hours.
2. We believe that Barnville and Jackstones were ultimately held under common beneficial ownership, although we do not have personal knowledge of the identity of the beneficial owner or owners. We likewise do not know the beneficial owners of Claycroft and Dalecroft.
3. I will address questions a. – c. collectively since they relate to the same structural features. Copies of the Purchase Agreements, Securities Lending Agreement and trade confirmations to which you refer are attached. (with one exception, as we have been unable so far to locate a copy of the Securities Lending Agreement dated June 6, 2000).

It was always the case that the portfolio of securities traded by and between Barnville and Jackstones was of a purely contractual book-entry nature. This was understood by all concerned given the dollar values of the portfolios in question. The sale and purchase of the securities were accomplished through contractual commitments (the Purchase Agreements and related confirmations) which gave rise to legal obligations which were recorded in the entities' respective books and records. The settlement of these sale and purchase obligations (of delivery on the part of Jackstones and of payment of the purchase price by Barnville) were settled by a process of netting with equal and opposite obligations under stock lending transactions (the Securities Lending Agreements) entered into between them at the same time. Though the transactions occurred off-market, all prices for the constituent shares were determined by reference to market-published prices. In response specifically to question 4.b., these amounts are shown on the enclosed documents.

Put another way, Jackstones sold short the underlying securities to Barnville, which it "covered" through borrowing those same securities back from Barnville under the stock loan. From Barnville's perspective, it was long the stock, but subject to the stock loan with Jackstones. Its purchase of those shares from Jackstones was funded by the cash collateral that Barnville was due to receive from Jackstones under this stock loan. For Jackstones, this creates a short position which renders it liable to re-deliver the stock upon any recall by Barnville or its assignee.

Because the transactions were conducted in this manner through the enclosed documents, no physical transfer of shares were made. No transactions took place over any exchange and no cash transfers passed between bank accounts of the two companies. This however was always understood to be the case; Euram obtained assurances from Quellos that the book-entry nature of these transactions had been known by the counsel with whom they developed the strategy and that it would be disclosed to any client advisor and opinion provider involved in any subsequent implementation. However, Euram acted on directions of Quellos, including the content and timing of all trading activity and the subsequent transactional steps involving Quellos clients.

With respect specifically to question 4.c., Euram had no broader involvement with Barnville other than these transactions with Jackstones and so has no knowledge of any other activities of that entity and the associated assets and liabilities.

4. As just described, the stock loan transactions between Jackstones (as borrower) and Barnville (as lender) represents the flip side of the structure to the sale and purchase transactions. The

same conclusions can be derived regarding the nature of the shares that were the subject of those loan transactions. Again, Eram had no broader involvement with Jackstones and so has no access to any of its other activities.

5. It is correct as described above.

I hope this is helpful in assisting your investigation into these matters. I am happy to expand upon any of the above in whatever way I can and would suggest that the best way to do so would be through a similar written exchange.

Yours sincerely,

John Staddon

SUSAN M. COLLINS, MAINE, CHAIRMAN  
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 JIM F. BROWNE, UTAH  
 E DOMENICI, NEW MEXICO  
 JOHN WARNER, VIRGINIA  
 JOSEPH I. LIEBERMAN, CONNECTICUT  
 CARL LEVIN, MICHIGAN  
 DANIEL K. AKAKA, HAWAII  
 THOMAS R. CARPER, DELAWARE  
 MARK DAYTON, MINNESOTA  
 FRANK LAUTENBERG, NEW JERSEY  
 MARK PRYOR, ARKANSAS  
 MICHAEL E. BOPP, STAFF DIRECTOR AND CHIEF COUNSEL  
 MICHAEL L. ALEXANDER, MINORITY STAFF DIRECTOR

# United States Senate

COMMITTEE ON  
 HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
 WASHINGTON, DC 20510-6250  
 July 19, 2006

VIA E-MAIL (John.Staddon@euramgroup.com)

Mr. John Staddon  
 Head of Structured Products  
 European American Investment Group  
 6 Duke Street, St. James's  
 London SW1Y 6BN  
 United Kingdom

Dear Mr. Staddon:

Thank you for your July 15, 2006, e-mail response to our inquiries. We are sorry that you are unable to testify at the hearing. We believe you would be able to provide information that would be very helpful to the Subcommittee's inquiry.

Your responses were very helpful to our understanding of these matters. The Subcommittee very much appreciates your willingness to answer the questions and hopes that you will be able to clarify a few items and answer additional questions raised by your earlier responses. Given that we are attempting to complete our review of this matter very shortly, we would greatly appreciate it if you could provide us with responses to as many of these questions as possible before you leave for your vacation on July 24th.

1. In your July 15th e-mail you stated that "Euram was involved in seeking the services of a third party corporate administrator with suitable contacts in the Isle of Man who obtained the use of Barnville and Jackstones for the trading activity in question," and you mentioned that the administrator was Triskelion. The Subcommittee has information indicating that Jackstones' directors were employees of Trident Trust and/or Sanne Corporate Services Limited, both of which use the same address, which is different from Triskelion's. Could you please briefly expand on your previous explanation and tell us whether Euram perhaps worked through two administrators or whether Triskelion may have involved another administrator for Jackstones? Any additional information you could provide us about these arrangements would be very helpful.
2. Were Barnville and Jackstones used for any business other than transactions related to the POINT strategy?

3. In an August 22, 2001, e-mail to Mr. Wilk (attached), you wrote the following about the beneficial owner of Barnville and Jackstones:

Barnville is owned jointly by Claycroft Limited and Dalecroft Limited, both Isle of Man companies. Jackstones is wholly owned by Sanne Corporate Nominees Limited. Each of these corporate owners are nominee companies controlled and administered by two separate trustee and corporate administration operations in the IoM. I am not at all keen on revealing the ultimate beneficial owner. If there is persistence on it by HSBC, then I guess we can certify that the person in question is an existing client of Euram Bank and that we can testify for his reputation and good standing accordingly.

It appears that at the time of the e-mail to Mr. Wilk (August 2001) you knew the identity of the beneficial owner of Jackstones and Barnville and that it was a client of Euram. Who did you understand to be the beneficial owner of Barnville and Jackstones at the time of your e-mail to Mr. Wilk?

If you did not know the identity of the beneficial owner of Jackstones and Barnville, please explain what you meant by this statement to Mr. Wilk in your e-mail.

Who are the two trustee and corporate administration operations referred to in your e-mail as the entities that controlled and administered Claycroft Limited, Dalecroft Limited and Sanne Corporate Nominees Limited?

4. In April 2000, you engaged in a series of e-mail exchanges (attached) with Mr. Wilk in which you urged that the client in a POINT strategy "be fully apprised of the nature of the share trading between the two Isle of Man companies." When Mr. Wilk informed you that the attorney writing the tax opinion did not address the nature of the share exchange in the opinion because the attorney believed that "the client should not know how the shares were contributed to the SPV," you replied to Mr. Wilk with the following:

"I obviously understand Lew's approach, but there is a commercial risk that both you and I know only too well and that is that the client turns round under a certain scenario and claims to have been misled as to the nature of the share trading between the two IoM companies. Speaking for Euram, we either need to know that the client and its advisors are aware of how the share trades are entered into or, if this is not possible, then we need to understand how it is that there will be no possible come back from the client at a later stage if everything does not to plan."

With respect to the correspondence cited above (and attached), please describe the "nature of the share trading" that you are referring to.

What is it about the nature of the share trading that you believe is important for the client to know?

What is the "certain scenario" that you refer to, which might lead a client to claim to have been misled as to the nature of the share trading between the two IoM companies?

How were your concerns and suggestions resolved?

5. As far as Euram knows, did either Barnville or Jackstones have access to any substantial capital or other resources, other than their mutual contract rights arising under the stock purchase and securities lending agreements, that would enable them to fulfill their obligations to each other under those agreements? If so, please identify and describe those resources.

Please contact me if you would like further clarification regarding our questions. Thank you again for your assistance on these matters and I look forward to receiving your responses.

Sincerely,



Laura Stuber  
Counsel to the Minority  
Permanent Subcommittee on Investigations

CL/ls



1147

-----Original Message-----

From: "Stadler, John" <stadlerj@euram.com>  
Sent: Wednesday, August 22, 2001 9:16 AM  
To: 'Chuck Wilk'  
Subject: RE: Ownership

Barnville is owned jointly by Claycroft Limited and Dalecroft Limited, both Isle of Man companies. Jackstones is wholly owned by Sanna Corporate Nominees Limited. Each of these corporate owners are nominee companies controlled and administered by two separate trustee and corporate administration operations in the IoM. I am not at all keen on revealing the ultimate beneficial owner. If there is persistence on it by HSBC, then I guess we can certify that the person in question is an existing client of Euram Bank and that we can testify for his reputation and good standing accordingly.

Still on for next week? By the way, Monday is a bank holiday here and in the IoM.

Best regards,  
John

EURAM 10

-----Original Message-----

From: John Staddon [mailto:john.staddon@euraminvest.com]

Sent: Tuesday, April 04, 2000 11:46 AM

To: Chuck Wilk

Subject: RE: Point

I obviously understand Lew's approach, but there is a commercial risk that both you and I know only too well and that is that the client turns round under a certain scenario and claims to have been misled as to the nature of the share trading between the two IoM companies. Speaking for Euram, we either need to know that the client and its advisors are aware of how the share trades are entered into or, if this is not possible, then we need to understand how it is that there will be no possible come back from the client at a later stage if everything does not go to plan.

Timing sound fine from this side. I will put together a draft checklist in contemplation of this. In the meantime, could you send me a copy of Lew's opinion for the file.

Thanks,  
John

-----Original Message-----  
From: Chuck Wilk [mailto:ChuckW@gcm.com]  
Sent: Tuesday, April 04, 2000 7:21 PM  
To: 'John Staddon'  
Subject: RE: Point

John,

Client ready to proceed on or about 4/15. Lew Steinberg does not address the share exchange in his opinion because according to him the client should not know how the shares were contributed to the SPV. The client is introduced to the "product" (i.e. the HYPO structure) and purchases it as a high yield investment.

What do you think is left to be done to execute a sale of the SPV on 4/15? Should we produce a pre-closing checklist?

Thanks,  
Chuck

-----Original Message-----  
From: John Staddon [mailto:john.staddon@euraminvest.com]  
Sent: Tuesday, April 04, 2000 11:14 AM  
To: chuckW@gcm.com  
Cc: Rajan Puri  
Subject: Point

Chuck,

Jeff tells me that you are due to have the client meeting today and I hope that all goes well. I imagine that you will have a good feel for timing coming out of it and so I will expect a firm indication from you over the next 24hrs as to when you will want to pull the trigger.

Also to that end, I know that Chris has already discussed with Jeff the matter of us needing sight of the opinion being issued in connection with the structure and, if not dealt with in the opinion, an assurance that the client is fully apprised of the nature of the share trading between the two Isle of Man companies. Perhaps you could let me know when we can get sight of something.

Thanks,  
John

**Stuber, Laura (HSGAC)**

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**From:** Staddon John LON [John.Staddon@euram.com]  
**Sent:** Monday, July 24, 2006 11:13 AM  
**To:** Stuber, Laura (HSGAC)  
**Subject:** Reply to letter dated 20 July 2006

Dear Ms. Stuber,

With reference to your letter dated July 19, 2006, I set out below responses to the questions you raise.

1. You are correct. Our dealing was primarily with Triskelion, who was the administrator for Barnville. Jackstones, as you rightly point out, was separately administered by a different company, who our records indicate to be Sanne Corporate Services Limited.
2. We are not aware of other business activities undertaken by Barnville and Jackstones, whether between themselves or independently.
3. As stated in my previous replies to you, we do not have personal knowledge of the ultimate beneficial owner or owners of Barnville or Jackstones. What I was in fact suggesting to Mr. Wilk in the passage you quote is that if HSBC insisted upon knowing the identity of the ultimate beneficial owner(s) of those entities, then I would press for disclosure of their identities from the Isle of Man administrators. As a hypothetical way to resolve the question, those ultimate beneficial owners could then become clients of Euram Bank, which would undertake a "know your client" review of them, from which we would then be able to provide an interbank assurance as to their reputations and net worth. This never came to pass, and so that process did not take place and the individual(s) concerned did not become clients of Euram Bank. We did not seek to verify the ownership structure of those entities any further.
4. The general concern expressed to Quellos in this email (and indeed elsewhere on other occasions) was that the book entry nature of the share trading between Barnville and Jackstones would be fully disclosed to any clients (or client advisors) to whom Quellos marketed this structure. While we were in no position to assess the technical merits of the structure and in particular the putative results for end clients participating in it, we felt it important that clients should be aware of this aspect of the overall transaction, and that any opinion which sought to describe results that derived in some way from the original share portfolios should address it. We were not prepared to accept the risk that the portfolio was described in any other manner, or not at all, and which might suggest that the shares were traded on public exchanges. The "certain scenario" to which I referred was the potential of a client embarking on the strategy without having first received this disclosure and thereafter claiming a misrepresentation of fact. Although our records do not indicate how this discussion was ultimately resolved, I am certain that Euram would not have provided its services without having obtained assurances that the appropriate disclosures would be made, and for our part we proceeded on that basis.
5. As stated in response to question 2, we are only aware of the contractual dealings between Barnville and Jackstones under the stock purchase and securities lending agreements. We had no involvement in the capitalisation of those entities, nor in any other activity that may have generated substantial resources.

EURAM 13

I hope these responses have been helpful to you and the Subcommittee.

Yours sincerely,

John Staddon

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**From:** John Staddon [john.staddon@euraminvest.com]  
**Sent:** Monday, July 17, 2000 3:01 AM  
**To:** chrish@qcm.com  
**Subject:** Promissory note

**Importance:** High

Chris,

I got your message about how you think the additional capital injection into Reka is to be structured. The trouble is that I do not see how this can work. I had assumed that we would be having a circular funding pattern between the Woodglen entities, Reka and Barnville - such that no cash would need to actually pass i.e. purely book entry. If I have understood you correctly, you are in fact looking for the Reka capital to be invested in Euram fixed income instruments, the proceeds for which presumably could then be invested by Euram in Barnville paper. Unlike the pure book entry affair that I had originally understood, this would involve actual funding, balance sheet utilisation and a regulatory capital cost, something which we can not accommodate in the amounts required for these structures.

I hope I have misunderstood matters, but lets speak when you get in.

John

Permanent Subcommittee on Investigations

**EXHIBIT #55**

PSI-QUEL 09556

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**From:** Chuck Wilk  
**Sent:** Wednesday, August 11, 1999 3:41 PM  
**To:** Jeff Greenstein

  
POINT  
STRATEGY.doc

Permanent Subcommittee on Investigations  
**EXHIBIT #56a**

PSI-QUEL 22589

## POINT STRATEGY

Warburg, Dillon, Reed/UBS ("WDR") packages and sells a product referred to as a BLOC. A BLOC (similar products marketed by competitors include HYPOs) is normally a special purpose bankruptcy remote vehicle ("SPV") (that in our case is taxed as a partnership for U.S. tax purposes) containing a position in a U.S. security (that is traded on a stock exchange) that has issued a long dated covered warrant or option on the underlying security position. The SPV provides a securitized entity in which ownership interests are marketed as BLOC units and provide an enhanced rate of return (by coupling the return on the security with the return from the investment of the covered warrant/option proceeds). BLOCs are sometimes listed on a European stock exchange.

WDR solicits offshore hedge funds to participate in BLOCs by contributing securities held in the funds inventory to the SPV. The strong demand in Europe for the covered warrant structure on U.S. securities enables the fund to receive a premium over the underlying securities value.

A "Fund" agrees to participate with WDR in the formation of a BLOC. Fund agrees to provide securities and sell ownership units in SPV (privately or on an exchange) and WDR agrees to package the strategy, purchase the covered warrants for distribution purposes, place the OTC derivative securities and assist in the private sale or public listing of the ownership units.

After formation of the SPV and contribution of the security by Fund to the SPV, SPV issues long dated covered warrants that contain imbedded put and call options with different strike prices and maturities and investor security protection in the form of an indenture restriction that if at anytime the SPV fails to hold the underlying security the SPV must contain property with 3X the value of the underlying security. WDR purchases the warrants for distribution and the SPV invests the proceeds from writing the warrants.

WDR and Fund begin marketing the ownership units in the SPV by both soliciting private placement and beginning the process of listing on a stock exchange.

Quadra Group, LLC ("QUADRA"), that has an existing working relationship with WDR, has been approached by WDR regarding assistance in marketing and executing BLOC units to U.S. investors. Quadra introduces "TAXPAYER" to the BLOC strategy and TAXPAYER agrees to purchase, prior to listing on a stock exchange, 99% of the ownership units if QUADRA agrees to purchase the 1% managing member/general partner interest in the SPV.

UBS (the Bank) is introduced, by QUADRA, to TAXPAYER who requests financing to purchase the ownership units. As collateral for providing the purchase financing TAXPAYER is willing to provide UBS with a security interest in the SPV ownership units but no other collateral. UBS agrees to look only to the SPV ownership units provided that contemporaneously with the closing of the purchase of the ownership units TAXPAYER agrees to contribute additional assets to the SPV. Depending on the assets contributed by TAXPAYER (cash versus other marketable securities) the additional collateral will need to be valued at between 50 and 100 % of the amount borrowed.

Subsequent to the closing on the ownership units QUADRA evaluates the economic benefit of leaving the covered warrants out in the market and decides to exercise the imbedded call option



and redeem the warrants. After redemption, QUADRA invests the remaining assets using the prudent investor standard as modified by the SPV partnership/LLC agreement and unrestricted by the warrant indenture.

After evaluating the economic forecast for the performance of the assets inside the SPV relative to the loan outstanding to the TAXPAYER and the security interest held by UBS, QUADRA decides to liquidate enough securities to make a distribution to TAXPAYER in an amount sufficient to retire the debt obligation and receive a release of the security interest. The remaining assets continue to be invested.

Quadra evaluates the tax attributes of each asset held inside the SPV to determine the most economically and tax beneficial means of creating enough liquidity to make distribution to TAXPAYER.

**From:** Rajan Puri [rajan.puri@euraminvest.com]  
**Sent:** Tuesday, April 18, 2000 7:53 AM  
**To:** Rajan Puri; 'chrish@gcm.com'  
**Cc:** 'chuckw@gcm.com'; John Staddon  
**Subject:** RE: Further Revisions to POINT

Chris / Chuck

I have just spoken to John and understand that you all caught up yesterday...the points in my mail therefore may have already been addressed, or are potentially redundant, given the re-work necessary.

I will get back to you, if necessary, once I have spoken in greater detail with John

Regards  
 Raj

> -----Original Message-----  
 > From: Rajan Puri  
 > Sent: Tuesday, April 18, 2000 12:02 PM  
 > To: 'chrish@gcm.com'  
 > Cc: 'chuckw@gcm.com'; John Staddon  
 > Subject: Further Revisions to POINT  
 >  
 > Chris  
 >  
 > Further to the (fairly garbled) voicemail message I left you yesterday, I  
 > am writing in response to your latest mail to John.  
 >  
 > John is currently in New York (I believe he is back in the office tomorrow  
 > - Weds19th); I spoke to him last night - thoughts/comments as follows:  
 >  
 > a) Warrant Document  
 > i) Term re call provision on the Option should be 9 months instead of 90  
 > days.  
 > Fine - rather than send you another draft of the warrant document, it is  
 > probably easier for you to make the necessary amendment to the last set of  
 > documents we sent you;.  
 >  
 > ii) Associated warrant Price if Call Provision invoked  
 > John consciously excluded element (b) - ie initial subscription price plus  
 > 50% of any subsequent appreciation in the price of warrant from issue date  
 > to call date - from his draft; this is because we believe this is an  
 > unusual term, which is unnecessary given the 'virtual' nature of the  
 > warrant issue...the last thing we want to do is draw attention to this  
 > element of the structure, by inserting unusual or non-market standard  
 > terms into the documents.  
 >  
 > If your suggestion re the determination of the warrant price on the call  
 > date was simply made to ensure symmetry with the terms of the put  
 > provision, it may be wiser to take the offending clause out of the terms  
 > of the pur provision as well.  
 >  
 >  
 > b) Creation of Delaware SPV  
 > Unfortunately, neither EURAM nor our IoM colleagues have the detailed  
 > knowledge or contacts to set up the necessary Delaware-based SPV; this  
 > will need to be done either by yourselves, or Woody's tax advisors.  
 >

Permanent Subcommittee on Investigations  
**EXHIBIT #56b**

PSI-QUEL 13285

1157

>  
> If you would like to discuss any of this, please drop me a mail, or call  
> me on 011 44 20 7665 8686.  
>  
> Regards  
> Raj  
>

1158

**Dated 5 May, 2000**

**Reka Limited**

**US Call Warrants due 2005**

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**SUBSCRIPTION AGREEMENT**

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**Permanent Subcommittee on Investigations**

**EXHIBIT #56c**

**PSI-QUEL 07141**

**THIS SUBSCRIPTION AGREEMENT** (the "Agreement") is made on 5 May 2000, between:

- (1) Reka Limited (the "Issuer"); and
- (2) EA Investment Services Limited, a company organised under the laws of the British Virgin Isles (the "Company").

**WHEREAS:**

The parties wish to record the arrangements between them for the issue by the Issuer of 1000 USD covered call warrants due 2005 (the "Warrants", which expression where the context so admits shall include the Global Warrant (as defined below) to be delivered in respect of them).

**IT IS AGREED** as follows:

**1. ISSUE AND SUBSCRIPTION**

- (a) Subject to the terms and conditions of this Agreement, the Issuer agrees to issue the Warrants on 5 May 2000 or on such later date as the Issuer and the Company may agree (the "Closing Date"). The Warrants will be subscribed for at a subscription price of US\$50,547 per Warrant (the "Subscription Price").
- (b) The Company hereby agrees to subscribe and pay for, or to procure subscriptions and payment for, the Warrants on the Closing Date at the Subscription Price subject to the terms of this Agreement.

**2. CLOSING**

- (a) On the Closing Date, the Issuer will issue and deliver to the Company or to its order a duly executed global warrant representing the Warrants (the "Global Warrant").
- (b) Against such delivery the Company will pay or cause to be paid to the Issuer in immediately available funds the subscription monies for the Warrant (being the Subscription Price of the Warrant).
- (c) The Issuer hereby authorises and instructs such payment(s) to be credited to an account of the Issuer at the Company (the "Issuer Account"), which monies shall remain so credited until the expiry or exercise by holders of the Warrants (on a pro rata basis in the case of only some of the Warrants being exercised) or until the exercise of the Put Right in accordance with clause 6 below.

**3. UNDERTAKINGS BY THE ISSUER**

The Issuer undertakes with the Company as follows:

- (a) the Issuer will pay any stamp, issue, registration, documentary, transaction or other taxes and duties, including interest and penalties, payable on or in connection with the creation, issue and offering of the Warrants or the execution or delivery of this Agreement; and
- (b) the Issuer will forthwith notify the Company if at any time prior to payment of the subscription monies to the Issuer on the Closing Date anything occurs which renders

or may render untrue or incorrect in any respect any of the representations and warranties contained in clause 5 and will forthwith take such steps as the Company may reasonably require to remedy and/or publicise the fact.

#### 4. REPRESENTATIONS AND WARRANTIES

As a condition of the obligation of the Company to subscribe and pay for or procure subscriptions and payment for the Warrant, the Issuer represents and warrants to the Company that:

- (a) the Warrants are at the date of issue fully covered as a result of the Issuer holding, or having the unconditional right to call for, the Basket Shares (as defined in the Global Warrant);
- (b) it is duly incorporated and validly existing under the laws of the Cayman Islands with full power and authority to own its assets and to conduct a business;
- (c) all necessary actions, authorisations, conditions and things (including, without limitation, any necessary filings, registrations and consents) required to be taken, given, fulfilled and done by or on behalf of the Issuer in the Cayman Islands have been, or will be, taken, given, fulfilled and done in connection with the issue of the Warrants on or before the Closing Date;
- (d) no consent, approval, authorisation, licence or qualification of or with any court or governmental agency or body is required and no other action or thing is required to be taken, fulfilled or done in relation to this paragraph 4(d) which has not been taken, fulfilled or done on or prior to the date hereof by the Issuer for the execution and delivery of the Agreement and the issue and distribution of the Warrants and the performance of the terms of the Warrants;
- (e) the matters referred to in paragraph 4(d) above do not and will not:
  - (i) infringe, conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, the documents constituting the Issuer, or any indenture, trust deed, mortgage or other agreement or instrument to which the Issuer or any of its subsidiaries is a party or by which it or any of its properties is bound; or
  - (ii) conflict with any existing applicable law, rule, regulation, judgment, order or decree of any government, governmental body, administrative agency or court, domestic or foreign, having jurisdiction over the Issuer, any such subsidiary or any of its properties.
- (f) this Agreement has been duly authorised, executed and delivered by the Issuer and constitutes valid and legally binding obligations of the Issuer enforceable in accordance with their respective terms subject to the laws of bankruptcy and other laws affecting the rights of creditors generally;
- (g) the Warrants have been duly authorised by the Issuer and, when duly executed, authenticated and issued will constitute valid and legally binding obligations of the Issuer enforceable in accordance with their respective terms subject to the laws of bankruptcy and other laws affecting the rights of creditors generally;

- (h) there are no pending actions, suits or proceedings against or affecting the Issuer or any of its subsidiaries or any of its properties which, if determined adversely to the Issuer or any such subsidiary, would individually or in the aggregate have a material adverse effect on the condition (financial or other), prospects, results of operations or general affairs of the Issuer or on the ability of the Issuer to perform its obligations under this Agreement or the Warrants or which are otherwise material in the context of the issue of the Warrant and, to the best of the Issuer's knowledge, no such actions, suits or proceedings are threatened or contemplated;
- (i) no stamp or other duty is assessable or payable in, and no withholding or deduction for any taxes, duties, assessments or governmental charges of whatever nature is imposed or made for or on account of any income, registration, transfer or turnover taxes, customs or other duties or taxes of any kind, levied, collected, withheld or assessed by or within, the Cayman Islands in connection with the authorisation, execution or delivery of this Agreement or with the authorisation, execution, issue, sale or delivery of the Warrants;
- (j) no event has occurred or circumstance arisen which, had the Warrant been issued, might (or with the giving of notice and/or the lapse of time and/or the fulfilment of any other requirement might) constitute an "Event of Default" as defined in the terms and conditions of the Warrants;
- (k) that neither the Issuer, its affiliates nor any persons acting on its behalf has made or will make offers or sales of securities under circumstances that would require the registration of the Warrants under the United States Securities Act of 1933.

#### 5. CONDITIONS PRECEDENT

This Agreement and the obligations of the Company are conditional upon:

- (a) there having been, as at the Closing Date, no adverse change which is material in the context of the issue of the Warrants, in the financial or other condition of the Issuer, nor any breach of, nor any event rendering untrue, misleading or incorrect in any material respect, any of the warranties of the Issuer contained herein, nor any breach by the Issuer of any of its obligations hereunder;
- (b) the Issuer holding, or having the unconditional right to call for the Basket of Shares (as defined in the Global Warrant) on the Closing Date.

#### 6. PUT RIGHT

- (a) If at any time prior to the expiry of the Warrants, the Issuer no longer holds, or no longer has the right to call for the Basket of Basket Shares, then the Company shall have the right (the "Put Right") to put back to the Issuer all or any Warrants then outstanding which at such time it continues to hold for its own account.
- (b) In the event that the Company exercises the Put Right in accordance with clause 6(a), then it shall deliver to the Issuer the Warrants in respect of which such right is exercised and shall, if appropriate, amend the Global Warrant accordingly.
- (c) In exchange for the delivery of such Warrants to the Issuer, the Issuer shall be liable to pay to the Company an amount per Warrant equal to the Subscription Price plus

interest thereon for the period commencing on the Closing Date and ending on the date of delivery by the Bank at a rate equal to the rate of interest payable on the Issuer Account, which payment shall be satisfied and discharged by the Company debiting the Issuer Account by the appropriate amount.

#### 7. INDEMNITY

The Issuer agrees to indemnify and hold harmless the Company and its respective directors, officers, employees (each an "Indemnified Person") from and against any and all losses, claims, damages, liabilities, judgments and expenses (including, but not limited to, legal costs and expenses) which it may incur, or which may be made against it caused by or arising out of any breach or alleged breach of any of the representations, warranties, undertakings or agreements contained in, or any certificate issued by the Issuer pursuant to, this Agreement. The amount paid or payable by an Indemnified Person as a result of such losses, claims, damages, liabilities, judgments or expenses shall include any legal or other expense incurred by such Indemnified Person in connection with investigating or defending such claim.

#### 8. TERMINATION

The Company may by notice given at any time prior to payment of the subscription monies for the Warrants to the Issuer terminate this Agreement if:

- (a) any of the representations and warranties contained in clause 4 shall have been untrue in any material respect at the time of making thereof or shall subsequently have become untrue in any material respect or in the event of failure to perform any of the Issuer's undertakings or agreements in this Agreement; or
  - (b) on the Closing Date any of the conditions specified in clause 5 has not been satisfied or waived by the Company; or
  - (c) in the opinion of the Company, there shall have been since the date hereof, any change, or any development involving a prospective change, in national or international monetary, financial, political or economic conditions or currency exchange rates or foreign exchange controls such as would in the view of the Company be likely to prejudice materially the success of the offering and distribution of the Warrant or dealings in the Warrant in the secondary market.
- (2) Upon such notice being given, the parties hereto shall be released and discharged from their obligations hereunder.

#### 9. GOVERNING LAW AND JURISDICTION

- (1) This Agreement is governed by, and shall be construed in accordance with English law.
- (2) The Issuer hereby agrees for the benefit of the Company that the courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceedings arising out of or in connection with this Agreement may be brought in such courts.



IN WITNESS whereof this Agreement has been entered into on the date hereinbefore stated.

**Reka Limited**

By: CTC CORPORATION LTD.

Ray Cairns  
Director

**EA Investment Services Limited**


By:

- (2) The Issuer hereby agrees for the benefit of the Company that the courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceedings arising out of or in connection with this Agreement may be brought in such courts.

IN WITNESS whereof this Agreement has been entered into on the date hereinbefore stated.

**Reka Limited**

By:

  
EA Investment Services Limited  
By: Kariem Abdellatif, Director

THE WARRANTS REPRESENTED BY THIS GLOBAL WARRANT (THE "WARRANTS") HAVE NOT BEEN REGISTERED AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND TRADING IN THE WARRANTS HAS NOT BEEN APPROVED BY THE UNITED STATES COMMODITY FUTURES TRADING COMMISSION (THE "CFTC") UNDER THE UNITED STATES COMMODITY EXCHANGE ACT (THE "COMMODITY EXCHANGE ACT"). THE WARRANTS, OR INTERESTS THEREIN, MAY NOT AT ANY TIME BE OFFERED, SOLD, RESOLD, TRADED OR DELIVERED, DIRECTLY OR INDIRECTLY, IN THE UNITED STATES OF AMERICA (INCLUDING THE STATES AND THE DISTRICT OF COLUMBIA), ITS TERRITORIES, ITS POSSESSIONS AND OTHER AREAS SUBJECT TO ITS JURISDICTION ("UNITED STATES") OR DIRECTLY OR INDIRECTLY OFFERED, SOLD, RESOLD, TRADED OR DELIVERED TO, OR FOR THE ACCOUNT OR BENEFIT OF ANY PERSON ("U.S. PERSON") WHO IS (I) AN INDIVIDUAL WHO IS A CITIZEN OR RESIDENT OF THE UNITED STATES; OR (II) A CORPORATION, PARTNERSHIP OR OTHER ENTITY ORGANISED IN OR UNDER THE LAWS OF THE UNITED STATES OR ANY POLITICAL SUBDIVISION THEREOF OR WHICH HAS ITS PRINCIPAL PLACE OF BUSINESS IN THE UNITED STATES; OR (III) ANY ESTATE OR TRUST WHICH IS SUBJECT TO UNITED STATES FEDERAL INCOME TAXATION REGARDLESS OF THE SOURCE OF ITS INCOME; OR (IV) ANY TRUST IF A COURT WITHIN THE UNITED STATES IS ABLE TO EXERCISE PRIMARY SUPERVISION OVER THE ADMINISTRATION OF THE TRUST AND IF ONE OR MORE UNITED STATES TRUSTEES HAVE THE AUTHORITY TO CONTROL ALL SUBSTANTIAL DECISIONS OF THE TRUST; OR (V) A PENSION PLAN FOR THE EMPLOYEES, OFFICERS OR PRINCIPALS OF A CORPORATION, PARTNERSHIP OR OTHER ENTITY DESCRIBED IN (II) ABOVE; OR (VI) ANY ENTITY ORGANISED PRINCIPALLY FOR PASSIVE INVESTMENT, TEN PER CENT OR MORE OF THE BENEFICIAL INTERESTS IN WHICH ARE HELD BY PERSONS DESCRIBED IN (I) THROUGH (V) ABOVE IF SUCH ENTITY WAS FORMED PRINCIPALLY FOR THE PURPOSE OF INVESTMENT BY SUCH PERSONS IN A COMMODITY POOL THE OPERATOR OF WHICH IS EXEMPT FROM CERTAIN REQUIREMENTS FROM PART 4 OF THE CFTC'S REGULATIONS BY VIRTUE OF ITS PARTICIPANTS BEING NON-U.S. PERSONS; OR (VII) ANY OTHER "U.S. PERSON" AS SUCH TERM MAY BE DEFINED IN REGULATIONS UNDER THE SECURITIES ACT OR IN REGULATIONS ADOPTED UNDER THE COMMODITY EXCHANGE ACT. IN ADDITION IN THE ABSENCE OF RELIEF FROM THE CFTC, OFFERS, SALES, RE-SALES, TRADES OR DELIVERIES OF WARRANTS, OR INTERESTS THEREIN, DIRECTLY OR INDIRECTLY IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF U.S. PERSONS MAY CONSTITUTE A VIOLATION OF UNITED STATES LAW GOVERNING COMMODITIES TRADING, CONSEQUENTLY, ANY OFFER, SALE, RE-SALE, TRADE OR DELIVERY MADE, DIRECTLY OR INDIRECTLY, WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF A U.S. PERSON WILL NOT BE RECOGNISED.

**REKA LIMITED**  
The ("Issuer")  
**GLOBAL CALL WARRANT**  
In relation to

A Basket of Basket Shares of Companies in the US Technology Sector due 5 May 2005

This global warrant (the "Global Warrant") represents a duly authorised issue of 1000 warrants (the "Warrants" and each one a "Warrant") in relation to a Basket of Shares of Companies in the US Technology Sector due 5 May 2005. The Global Warrant is subject to the attached terms and conditions (the "Conditions").

The Global Warrant shall be governed by and construed in accordance with English law.

In witness whereof this Global Warrant has been executed by Reka Limited as a deed poll and delivered on the day and year first below written.

Dated 5 May 2000

SIGNED as a deed )  
by Reka Limited ) *Ray Cairns*

In the presence of: *Judith Patrick*

Witness' signature *Judith Patrick*

Name: .....

Address: P.O Box 31106SMB, GRAND CAYMAN

1166

EA Investment Services Limited  
C/o Citco Building  
Wickhams Cay  
PO Box 662  
Road Town, Tortola  
British Virgin Islands

Reka Limited  
West Bay Road  
P.O. Box 31106  
Grand Cayman  
Cayman Islands

Dated effective the 6<sup>th</sup> day of June 2000

Dear Sirs,

We refer to the 1000 covered call warrants issued by Reka Limited on 5 May 2000 relating to a basket of shares in various US technology companies (the "Warrants"), all of which were subscribed for by EA Investments Limited pursuant to the terms of a subscription agreement of the same date (the "Subscription Agreement"). We also refer to the sale by Reka Limited of the Basket Shares to Jackstones Limited, which we believe took place on 5 June 2000 (the "Sale Date").

Capitalised terms not otherwise defined in this letter shall bear the same meanings given to them in the Subscription Agreement and/or in the Global Warrant.

The purpose of this letter is to confirm that:

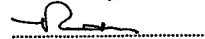
- (a) on the understanding that the Warrants are now uncovered as a result of such sale to Jackstones Limited, we have immediately exercised our Put Right with respect to all of the Warrants outstanding (all of which continue to be held by EA Investments Limited as of today's date); and
- (b) the Issuer Account as of today's date is credited with \$50,547,000 (being the sum of the subscription monies for the Warrants) together with \$314,514.67 accrued interest (giving a total credit balance of \$50,861,514.67).

In the exercise of the Put Right, we hereby deliver all of the Warrants to you and relinquish in full any future entitlement with respect thereto and, in accordance with clause 6(c) of the Subscription Agreement, shall forthwith treat the payment by you for such Warrants as having been satisfied by us debiting in full the total amount currently standing to the credit of the Issuer Account (including accrued interest).

This letter shall be governed by and construed in accordance with English law.

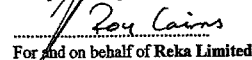
Please indicate your acceptance of the above by signing and returning to us a copy of this letter enclosed for that purpose.

Yours sincerely,



For and on behalf of EA Investment Services Limited

Accepted and agreed

  
For and on behalf of Reka Limited

CTC CORPORATION Ltd  
DIRECTOR

Permanent Subcommittee on Investigations  
EXHIBIT #56d

PSI-QUEL 07122

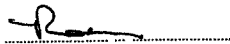
EA Investment Services Limited  
 Citco Building  
 Wickhams Cay  
 P.O. Box 662  
 Road Town, Tortola  
 British Virgin Islands

Statement of Account  
 Quarter ended 30 June 2000  
 USD Client Account  
 Statement - 001

Reka Limited  
 West Bay Road  
 P.O. Box 31106 SMB  
 Grand Cayman  
 Cayman Islands

Trade Date	Value Date		Debit	Credit	USD Balance
01-Apr-00	01-Apr-00	Balance Brought Forward			0.00
05-May-00	05-May-00	Transfer Incoming Funds		50,547,000.00	50,547,000.00
31-May-00	31-May-00	Interest to 31-May-2000		0.00	50,547,000.00
06-Jun-00	06-Jun-00	Wire Transfer - A001	50,861,514.67		(314,514.67)
30-Jun-00	30-Jun-00	Interest to 30-June-2000		0.00	(314,514.67)
30-Jun-00	30-Jun-00	Total Debits / Credits	50,861,514.67	50,547,000.00	
		Closing Balance			(314,514.67)

Certified as correct by:



Director, on behalf of  
 EA Investment Services Limited

EA Investment Services Limited  
C/o Citco Building  
Wickhams Cay  
PO Box 662  
Road Town, Tortola  
British Virgin Islands

Titanium Trading Partners LLC  
19 Mount Havelock  
Douglas  
Isle of Man  
IM1 2QG

November 16, 2001

Dear Sirs,

We refer to the 1000 covered call warrants issued by Titanium Trading Partners LLC on September 11, 2001 relating to a basket of shares in various US technology companies (the "Warrants" or "Global Warrant"), all of which were subscribed for by EA Investment Services Limited pursuant to the terms of a subscription agreement of the same date (the "Subscription Agreement"). We also refer to the sale by Titanium Trading Partners LLC of the Basket Shares which we believe took place on November 13, 2001 (the "Sale Date").

Capitalised terms not otherwise defined in this letter shall bear the same meanings given to them in the Subscription Agreement and/or in the Global Warrant.

The purpose of this letter is to confirm that:

- (a) on the understanding that the Warrants are now uncovered as a result of such sale, we have immediately exercised our Put Right with respect to all of the Warrants outstanding (all of which continue to be held by EA Investment Services Limited as of today's date); and
- (b) the Issuer Account as of today's date is credited with \$345,273,000 (being the sum of the subscription monies for the Warrants) together with \$2,148,365.33 accrued interest (giving a total credit balance of \$347,421,365.33).

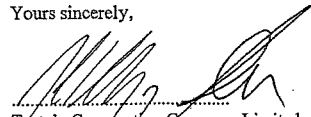
In the exercise of the Put Right, we hereby deliver all of the Warrants to you and relinquish in full any future entitlement with respect thereto and, in accordance with clause 6(c) of the Subscription Agreement, shall forthwith treat the payment by you for such Warrants as having been satisfied by us debiting in full the total amount currently standing to the credit of the Issuer Account (including accrued interest).

This letter may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This letter shall be governed by and construed in accordance with English law.

Please indicate your acceptance of the above by signing and returning to us a copy of this letter enclosed for that purpose.

Yours sincerely,



Tortola Corporation Company Limited  
For and on behalf of EA Investment Services Limited

Accepted and agreed

.....  
For and on behalf of Titanium Trading Partners LLC

EA Investment Services Limited  
 Citco Building  
 Wickhams Cay  
 P.O. Box 662  
 Road Town, Tortola  
 British Virgin Islands

Statement of Account  
 Period ended 31 December 2001  
 USD Client Account  
 Statement - 001

Titanium Trading Partners LLC  
 19 Mount Havelock  
 Douglas  
 Isle of Man  
 IM1 2QG

Trade Date	Value Date		Debit	Credit	USD Balance
1-Jul-01	1-Jul-01	Balance Brought Forward			0.00
21-Sep-01	21-Sep-01	Transfer Incoming Funds		345,273,000.00	345,273,000.00
16-Nov-01	16-Nov-01	Wire Transfer - A001	347,421,365.33		(2,148,365.33)
16-Nov-01	16-Nov-01	Interest to 16-Nov-2001		2,148,365.33	0.00
31-Dec-01	31-Dec-01	Total Debits / Credits	347,421,365.33	347,421,365.33	
		Closing Balance			0.00

Certified as correct by:

.....  
 Director, on behalf of  
 EA Investment Services Limited

PSI-QUEL 23701



Company number 089809C

Section 1

THE COMPANIES ACTS 1931 TO 1993

**Form of Annual Return of a Company having a Share Capital**

(other than a company limited by guarantee) pursuant to sections 107 and 340 of the Companies Act 1931 (as amended)

Annual Return of **Barnville Limited**made up to the **12th day of February 2001**

being the company's return date

**The Address of the Registered Office of the Company is as follows :**19 Mount Havelock  
Douglas  
Isle of Man

Principal trade or business carried on by the company since the last annual return (or incorporation if this is the first annual return)

**INVESTMENTS**

Is there a non resident company declaration or a certificate under section 9 (2) of the Non Resident Company duty 1986 in force in respect of the Company

NO

If the answer to the last question is YES

(a) has the central management and control of the company been in the Isle of Man at any time since the last annual return (or incorporation if this is the first annual return)

N/A

(b) has the company derived any income from any property, trade, business or other source in the Isle of Man since the last annual return (or incorporation if this is the first annual return)N/A

Has the company been a stakeholder as defined in section 20 of the Timeshare Act 1996 at any time since the last annual return date, or, if no annual return has been previously delivered, at any time since incorporation?

NO

If the answer to the last question is YES and the company is a company limited by shares

(a) has the company issued shares fully paid up in cash of the minimum nominal value required by section 109(3B)(a) of the Companies Act 1931?

N/A

(b) does the company hold indemnity insurance for such sum and in respect of such liabilities as are specified in section 109(3B)(b) of the Companies Act 1931?

N/A

Total amount of indebtedness of the Company in respect of all mortgages and charges of the kind which are required to be registered with the Registrar of Companies

Nil

Presented by **Triskelion Trust Company Limited**  
19 MOUNT HAVELOCK  
DOUGLAS

GENERAL REGISTRY I.O.M COMPANIES REGISTRY		
	INITIALS	DATE
FILED	C	7/5/01

DATA  
CENTRE  
CoSecPac

Permanent Subcommittee on Investigations

**EXHIBIT #57a**

## Section 2

Annual Return of **Barnville Limited**  
made up to the **12th day of February 2001**

Authorised Share Capital

£ **2000.00** Divided into :-

**2000 ordinary Shares of £1.00**

	Amount/Share	Number	Class
1 Number of shares of each class taken up to the date of this return		2	ordinary
2 Number of shares of each class issued subject to payment wholly in cash		2	ordinary
3 Number of shares of each class issued as fully paid up for a consideration other than cash		Nil	
4 Number of shares of each class issued as partly paid up for a consideration other than cash and the extent to which each such share is so paid up		Nil	
5 Number of shares (if any) of each class issued at a discount		Nil	
6 Amount of discount on the issue of shares which has not been written off		Nil	
7 Amount per share called up on number of shares of each class	£ 1.00	2	ordinary
8 Total amount of calls received including payments on application and allotment	£ 2.00		ordinary
9 Total amount (if any) agreed to be considered as paid on number of shares of each class issued as fully paid for consideration other than cash		Nil	
10 Total amount (if any) agreed to be considered as paid on number of shares of each class issued as partly paid for consideration other than cash		Nil	
11 Total amount of calls unpaid		Nil	
12 Total amount of sums (if any) paid by way of commission in respect of any shares or debentures		Nil	
13 Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last annual return		Nil	
14 Total number of shares of each class forfeited		Nil	
15 Total amount paid (if any) on shares forfeited		Nil	
16 Total amount of shares for which share warrants to bearer are outstanding		Nil	
17 Total amount of share warrants to bearer surrendered since last return		Nil	
17a Total amount of share warrants to bearer issued since last return		Nil	
18 Number of shares comprised in each share warrant to bearer, specifying in the case of warrants of different kinds, particulars of each kind		Nil	

**Private Company**

**Certificate to be given by a Private Company**

I certify that Company has not since the date of the last Annual Return issued any invitation to the public to subscribe for any shares or debentures of the Company

(Signature)

(State whether Director or Secretary)

DATA  
CENTRE  
CoSecPac

Annual Return of : **Barnville Limited**

Section 3

made up to the **12th day of February 2001****List of past and present members**

Folio in register of members	Name and Address	Number of shares or amount of stock held by an existing member at date of return		Particulars of shares transferred since the date of the last return, or, in the case of the first return, of the incorporation of the company by (a) persons who are still members and (b) persons who have ceased to be members			
				Number	(a)	(b)	Remarks
CLAYCROFT	Claycroft Limited, 19 Mount Havelock, Douglas, Isle of Man	1 00	ordinary				
DALECROFT	Dalecroft Limited, 19 Mount Havelock, Douglas Isle of Man	1 00	ordinary				

Annual Return of: **Baraville Limited****Section 4**made up to the **12th day of February 2001**

Particulars of the directors of the company at the date of the return

**Name** Mr Paul Moore  
**Address** Crofton, West Baldwin, Isle of Man, IM4 5ET

**Occupation** Chartered Accountant  
**Nationality** British

**Name** MS Ann Nicholson  
**Address** 26 Meadow Crescent, Ashbourne Park, Braddan, Isle of Man

**Occupation** Company Administrator  
**Nationality** British

**Name** Mrs Pamela Ann Young  
**Address** Cronk Veg, Glen Road, Colby, Isle of Man

**Occupation** Chartered Accountant  
**Nationality** Manx

The Secretary/Secretaries of the company at the date of this return

**Name** Mr Paul Moore  
**Address** Crofton, West Baldwin, Isle of Man, IM4 5ET

I/We certify this return which comprises Sections 1, 2, 3 &amp; 4

(Signature) \_\_\_\_\_

(State whether Director, Manager or Secretary)

DATE: \_\_\_\_\_

CoSecPac

1175

30-Nov-00 17:14 From

407824872801

T-414 P.10/11 F-415

Page 1 of 1

**FINANCIAL SUPERVISION COMMISSION**

**ISLE OF MAN**

**BARNVILLE LIMITED**

**89809C**



The Financial Supervision Commission certifies that the above mentioned company was incorporated on the 12<sup>th</sup> February 1998 and it has continued in existence since that date to the present time.

The present officials of the company are:

**Directors**

Paul Moore	Crofton, West Baldwin, Isle of Man IM4 5ET	Chartered Accountant
Ann Nicholson	26 Meadow Crescent, Ashbourne Park, Braddan Isle of Man	Company Administrator
Pamela Ann Young	Cronk Veg, Glen Road, Colby, Isle of Man	Chartered Accountant

**Secretary**

Paul Moore Crofton, West Baldwin, Isle of Man IM4 5ET

The present Registered Office is situate at 19 Mount Havelock, Douglas, Isle of Man.

There are no documents on the file relating to the winding-up or striking-off.

There are no mortgages registered on the file.

This 30th day of November 2000

Assistant Supervisor  
Companies Registry

NOTE: The information contained above is taken from documents registered on the public record at the date of the summary and is subject to change.



Isle of Man  
Government

100

Permanent Subcommittee on Investigations

EXHIBIT #57b

0 [TX/RX NO 8148] 0010

TXD 11:51 AM 01-11-20  
FBI-QUEL 08651

PAGE 1

Company number 095581C

THE COMPANIES ACT 1931 TO 1993

FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL  
(other than a company limited by a guarantee)

Annual return of Jackstones Limited

Made up to the 28th April 2000 (being the Company's Return date)

The address of the Registered office of the company is as follows  
12-14 Finch Road  
Douglas  
Isle of Man

Principal trade or business carried out by the company since the last  
annual return (or incorporation if this is the first annual return)  
Holding Company

Total amount of the indebtedness of the Company in respect of all mortgages and charges  
of the kind which are required to be registered with the Registrar of Companies NIL

1 Is there a non-resident company declaration or a certificate under section 9(2)  
of the Non-Resident Company Duty Act 1986 in force in respect of the Company? NO

If the answer to the last question is YES

(a) has the central management and the control of the company been in  
the Isle of Man at any time since the last annual return  
(or incorporation if this is first annual return)

(b) has the company derived any income from any property, trade, business  
or other source in the Isle of Man since the last annual return  
(or incorporation if this is first annual return)

2 Has the company been a stakeholder as defined in section 20 of the Timeshare Act 1996  
at any time since the last annual return date, or, if no annual return has been  
previously delivered at any time since incorporation? NO

3 If the answer to the last question is YES and the company is a company limited by shares

(a) has the company issued shares fully paid up in cash of the minimum nominal value  
required by section 109(3B)(a) of the Companies Act 1931? N/A

(b) does the company hold indemnity insurance for such sum and in respect of such  
liabilities as are specified in section 109(3B)(b) of the Companies Act 1931? N/A

Presented by Trident Trust Company (I O M ) Limited  
Our Ref JKM/JACKLI

NOTE - This Return must be signed at the end by a  
Director or by the Manager or Secretary of the Company

DOCUMENT PROCESSED	
INITIAL	DATE
AF	25/5/00

Permanent Subcommittee on Investigations

EXHIBIT #57c

PAGE 2

## SHARE CAPITAL DETAILS

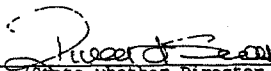
Nominal Share Capital GBP 2,000.00 -  
Divided into 2,000 Ordinary shares of GBP 1.00 each

1	Number of Ordinary shares taken up to the date of this return	1
2	Number of Ordinary shares issued subject to payment wholly in cash	1
3	Number of shares of each class issued as fully paid up for a consideration other than cash	Nil
4	Number of shares of each class issued as partly paid up for a consideration other than cash and extent to which each such share is so paid up	N/A
5	Number of shares (if any) of each class issued at a discount	N/A
6	Amount of discount on the issue of shares which has not been written off at the date of this return	N/A
7	Amount per share called up on number of Ordinary shares	GBP 1.00
8	Total amount of calls received including payments on application and allotment Ordinary shares	GBP 1.00
9	Total amount (if any) agreed to be considered as paid on number of shares of each class issued as fully paid up for a consideration otherwise than cash	N/A
10	Total amount (if any) agreed to be considered as paid on number of shares of each class issued as partly paid up for a consideration otherwise than cash	N/A
11	Total amount of calls unpaid	Nil
12	Total amount of sums (if any) paid by way of commission in respect of any shares or debentures	N/A
13	Total amount of sums (if any) allowed by way of discount in respect of any debentures since the date of the last return	N/A
14	Total number of shares of each class forfeited	Nil
15	Total amount paid (if any) on shares forfeited	N/A
16	Total amount of shares for which share warrants to bearer are outstanding	N/A
17	Total amount of share warrants to bearer issued and surrendered respectively since the date of the last return	ISSUED SURRENDERED N/A N/A
18	Number of shares comprised in each share warrant to bearer, specifying in the case of warrants of different kinds, particulars of each kind	CLASS NUMBER N/A N/A

Certificate to be given by a Private Company

I certify that the Company has not since the date of the last Annual Return issued any invitation to the public to subscribe for any shares or debentures of the company

(signature)



(State whether Director or Secretary)

PAGE 4  
Particulars of the directors of the company, at the date of the annual return

<u>NAME, NATIONALITY &amp; OCCUPATION</u>	<u>ADDRESS</u>
Gordon John Mundy Ireland Chartered Accountant	48 Selbourne Drive Douglas Isle of Man
Richard Scott British Economist	The Old Farmhouse Queens Road Port St Mary Isle of Man

Particulars of the Secretary of the company at the date of this return

<u>NAME</u>	<u>ADDRESS</u>
Gordon John Mundy	48 Selbourne Drive Douglas Isle of Man

We certify this return which comprises pages 1 2 3 and 4

Signed *Richard Scott*  
(State whether Director or Manager or Secretary)



1179

30-Nov-00 17:14 From-

401624572801

T-414 P.11/11 F-415

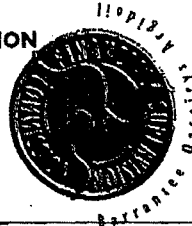
Page 1 of 1

**FINANCIAL SUPERVISION COMMISSION**

**ISLE OF MAN**

**JACKSTONES LIMITED**

**95581C**



The Financial Supervision Commission certifies that the above mentioned company was incorporated on the 28<sup>th</sup> April 1999 and that it has continued in existence since that date to the present time.

The present officials of the company are:

**Directors**

Gordon John Mundy	48 Selbourne Drive, Douglas Isle of Man	Chartered Accountant
Richard Scott	The Old Farmhouse, Queens Road Port St Mary, Isle of Man	Economist

**Secretary:**

Gordon John Mundy 48 Selbourne Drive, Douglas, Isle of Man

The present Registered Office is situate at 12-14 Finch Road, Douglas, Isle of Man IM1 2SA.

There are no documents on the file relating to the winding-up or striking-off.

The last Annual Return on the file is dated 28<sup>th</sup> April 2000.

There are no mortgages registered on the file.

This 30<sup>th</sup> day of November 2000

Assistant Supervisor  
Companies Registry



NOTE: The information contained above is taken from documents registered on the public record at the date of the summary and is subject to change.

2000

Permanent Subcommittee on Investigations  
**EXHIBIT #57d**

ITX/RX NO 8148] 0011  
XVZ LT:9T DEL 00. 11/00  
PSI-QUEL 08650

**From:** Chuck Wilk  
**Sent:** Wednesday, August 22, 2001 9:24 AM  
**To:** Brian Hanson  
**Subject:** FW: Ownership

keep this for our records but do NOT forward to HSBC. They approved the deal this morning without this information.

Chuck

-----Original Message-----

**From:** John Staddon [mailto:john.staddon@euramgroup.com]  
**Sent:** Wednesday, August 22, 2001 9:16 AM  
**To:** 'Chuck Wilk'  
**Subject:** RE: Ownership

Barnville is owned jointly by Claycroft Limited and Dalecroft Limited, both Isle of Man companies. Jackstones is wholly owned by Sanne Corporate Nominees Limited. Each of these corporate owners are nominee companies controlled and administered by two separate trustee and corporate administration operations in the IoM. I am not at all keen on revealing the ultimate beneficial owner. If there is persistence on it by HSBC, then I guess we can certify that the person in question is an existing client of Euram Bank and that we can testify for his reputation and good standing accordingly.

Still on for next week? By the way, Monday is a bank holiday here and in the IoM.

Best regards,  
 John

-----Original Message-----

**From:** Chuck Wilk [mailto:chuck.wilk@adelos.com]  
**Sent:** Tuesday, August 21, 2001 6:33 PM  
**To:** 'John.Staddon@euramgroup.com'  
**Subject:** RE: Ownership

Let's give them corporate shareholders first and see if they ask for more.

HSBC

## Account Application - Business Accounts

Account #:

Redacted by the Permanent  
Subcommittee on Investigations  
For Bank Use Only

## Application For:

☐ Business Checking ☐ Certificate of Deposit  
☐ Savings ☐ Not for Profit NOW☐ Insured Money Director Account  
☐ Not for Profit Savings ☐ OtherAccount Title: Barnville Limited

## Entity Type:

☐ Corporation ☒ Limited Liability Company  
☐ Trust ☐ Not-For-Profit Corporation  
☐ Estate ☐ Sole Proprietorship☐ Partnership  
☐ Unincorporated Association  
☐ Other

## Client Information:

Name: Barnville Limited

Tax I.D. Number

## Legal address:

19 Mount Havelock

Street

Douglas, Isle of Man IM 1206

City

Mailing address (if different from legal address above):

AS ABOVE

Street

City

Telephone: 01624 - 623 911 Fax: 01624 - 677 313 E-mail:Business Annual Revenues: \$ 100,000 No. of Employees: 0 Years in Business: 3Principal Business Owner(s): CLAYCROFT LTD. 50% Name: %DIRECTOR LTD. 50% Name: %

Type of Business (explain products/services, history, include major customers/suppliers for retailers/wholesalers):

INVESTMENT COMPANY (MAINLY IN TECHNOLOGY STOCK)

(continue on back)

Permanent Subcommittee on Investigations  
EXHIBIT #59a

HUI 0002300

## Owners and Authorized Signers:

List each Principal Owner and Authorized Signer and provide legible copy of Photo IDs (U.S. Driver's License (DL) or Passport (PP))

	Name	Title/Position	SSN	Date of Birth	Photo ID
1	PAUL MOORE	DIRECTOR			<input type="checkbox"/> DL or <input type="checkbox"/> PP
2	ANDY WILSON	DIRECTOR			<input type="checkbox"/> DL or <input type="checkbox"/> PP
3	PAUL MOORE	DIRECTOR			<input type="checkbox"/> DL or <input type="checkbox"/> PP
4					<input type="checkbox"/> DL or <input type="checkbox"/> PP
5					<input type="checkbox"/> DL or <input type="checkbox"/> PP
6					<input type="checkbox"/> DL or <input type="checkbox"/> PP
7					<input type="checkbox"/> DL or <input type="checkbox"/> PP
8					<input type="checkbox"/> DL or <input type="checkbox"/> PP
9					<input type="checkbox"/> DL or <input type="checkbox"/> PP

## Account Information

Purpose of Account: CASH ACCOUNT FOR LARGE SCALE STOCK  
PURCHASES AND SALES

## Source of Initial Deposit:

Type: \_\_\_\_\_ From: \_\_\_\_\_ Amount: \$ \_\_\_\_\_  
(wire, personal check, etc.) (drawee, transmitting bank, other identifying details)

Description: \_\_\_\_\_  
(from operations, loan drawdown, recent sale of securities, real estate, etc.)

## Expected Monthly Account Activity:

Average Balance: \$ ZERO \* (SEE BELOW)

	DEPOSITS			WITHDRAWALS	
	#	Dollar Amount		#	Dollar Amount
Cash	\$			\$	
Checks	\$			\$	
Wires	\$			\$	

Describe any unusual expected account activity (e.g. large volumes, foreign transfers, etc.):

EXAMPLE: A NEW SPV SET UP TO ENGAGE IN TRADING / INVESTMENT IN TECHNOLOGY STOCK.  
THE SPV IS USED WITHIN STOCK IS SOLD TO 3rd PARTIES. THE ACCOUNT  
THAT FLOW THROUGH THE ACCOUNT ARE LARGE BUT THEN QUICKLY GO TO ZERO - AS  
THE REVENUE ARE USED TO BUY STOCK FROM THE MARKET / OTHER PARTIES.  
\* SOME IN EXCESS OF US\$100,000,000. APPROX. 3 TRANSACTIONS THERE ARE A YEAR.  
I certify that the information provided on this application is true and correct to the best of my knowledge.

By: IM \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

PAUL MOORE, DIRECTOR  
First Name and Title

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HUI 0002301

1183

Mary Pan/HBUS/HSBC  
08/20/2001 03:55 PM

To: Russell Schreiber/HBUS/HSBC@HSBCAMERICAS  
cc  
bcc  
Subject: Silverlight

- Barnville and Jackstone are Isle of Man entities owned by a trust with mutual board members for both entities. Ultimately, members of the Quellos Group and some offshore partners are controlling shareholders of these two entities.
- Barnville buys entities with losses that existing shareholders can not use the tax deductions, ie foreign entities with investment losses in the US equity markets but can not write off the losses. They warehouse these losses until a buyer is located that can take advantage of the situation.
- Jackstone will short the stock holdings in the entities purchased by Barnville as a hedge and entered a stock borrowing arrangement with Barnville to secure the short position.

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HUI 0004041

Permanent Subcommittee on Investigations

**EXHIBIT #59b**

**KNOW YOUR  
CUSTOMER  
INFORMATION**
**Account  
Information**
**Expected Activity  
of this  
Relationship:**
**Business Account**

Account Title: Beverville Limited  
 Account Number: \_\_\_\_\_  
 Relationship Title: European American Investment Corporation  
 Sources of Funds: \_\_\_\_\_  
 Type of Business: Invest & Investment How Long in Business: \_\_\_\_\_  
 Purpose of Account: Investment M/C  
 Related Accounts, if any: \_\_\_\_\_  
 Other Banking Relationships (Past & Present): Yes

Referred By: Julia Goy  
☒ Existing Customer ☐ HSBC Office or Affiliate ☒ Well Known 3rd Party  
☐ Other (Please explain) \_\_\_\_\_  
 Years Known: 5 Relationship: Client

Cash Transactions per year (Approx.): 0  
 Wire Transfer per year (Approx.): 4  
 # of Checks/month (Approx.): 0  
 # of Deposits/month (Approx.): 5

Average Balance/Month (DDA): \$ low 7 figure  
 Plus/MMA: \$  
 TD: \$  
 Investments: \$

Type of Investments: Marketable securities

Visitation Date: 9/4/01

Additional Information: Beverville is a wholly owned subsidiary of Euron Bank. Purpose is to facilitate sale of assets for investment.

AFS 0001-BA2 (10/99)

 HSBC 

 Permanent Subcommittee on Investigations  
**EXHIBIT #59c**

HUI 0002298

Additional information on Principle(s) or Beneficial Owner(s) of Account	
<p><i>Swans Bank's subsidiary</i></p> <p>Name of Principle/Beneficial Owner</p>	
Source of Wealth	Profession
Name of Company	Position
Address	
Phone	Nature of Business
<p><i>Arthur and Crockett</i></p> <p>Name of Principle/Beneficial Owner</p>	
Source of Wealth	Profession
Name of Company	Position
Address	
Phone	Nature of Business
Name of Principle/Beneficial Owner	
Source of Wealth	Profession
Name of Company	Position
Address	
Phone	Nature of Business
<p>This corporation is well known to me and is hereby recommended as a potential client of the Bank.</p> <p>✓ Officer Signature _____ Date _____</p> <p>This corporation is not well known to me. However, based on the above referral, I hereby recommend the account as a potential client to the Bank.</p> <p>✓ <i>Meigs</i> Officer Signature _____ Date <i>10/15/01</i></p>	
<p><b>Recommendation New Clients</b></p> <p>This corporation has had an existing relationship with the Bank since _____ related account number _____. Based on the account performance to date, I recommend that we open an account.</p> <p>✓ Officer Signature _____ Date _____</p> <p>Preparer _____ Date _____</p> <p>✓ Signature _____ Date _____</p>	
<p><b>Existing Clients</b></p>	

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HUI 0002299

HSBC

[To be completed by Bank for each individual principal, fiduciary, etc.]\*  
 INDIVIDUAL INFORMATION - KNOW YOUR CLIENT

Relationship Title: \_\_\_\_\_

Name of Individual: Barnville Home Telephone No.: \_\_\_\_\_

Residence Address: \_\_\_\_\_

Principal Beneficial Owner 3<sup>rd</sup> Party Trustee Custodian Any-in-Fact Trust Senior 1<sup>st</sup> Trust Beneficiary  
 For non-U.S. persons: Confirmed with client that he/she is not politically connected.

Photo Identification: U.S. Driver's License Passport Other (describe): \_\_\_\_\_  
 (Place legible verified copy in file)

Client Background  
 Net Worth: Under \$1 Million \$1-5 Million \$5-10 Million \$10-50 Million >\$50 Million

Source of Wealth: from his/her business/occupation \_\_\_\_\_ other \_\_\_\_\_  
 (Describe and explain relevant sources, such as relationship, employment history/type of business, inheritance, sales of assets, etc.)

Barnville is a wholly owned subsidiary of European American Investment Bank, an Asian Investment Bank. Barnville is used to facilitate the sale of investment assets.

Sources of Cash Flow: \_\_\_\_\_  
 (Describe and explain relevant sources, such as business operations, employment, real estate, investments, etc.)

Free from sales transactions.

[Signature]  
 Relationship Manager signature

Date

7/2/03

Mary Chan  
 Preparer signature (if different)

Date

12-26-03

\*If non-individuals (i.e. Corporations, LLCs, Partnerships, or Trusts), serve as owners/general partners, you will need the KYC information and documentation governing these entities in order to trace back the organization structure to the individual owners. This form not required for publicly owned corporations.

(Rev 10/03)

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Permanent Subcommittee on Investigations

EXHIBIT #59d

HUI 0002297



1187



Note  
22 Aug 2001 10:25

From:	George Wendler	Tel:	(1 212) 525 6065
Title:	Senior Exec Vice President	Location:	452 5th Ave, Floor 03
WorkGroup:	RNB Domestic Lending Support	Mail Size:	5770

To: Robert Treanor, et al

Subject: NON-CIB GROUP: HAIM SABAN FAMILY GROUP

fyi.....

*WPA 8/28/01*

Forwarded by George Wendler/HBUS/HSBC on 08/22/2001 10:25 AM



Crf SHUTTLE@HSBC  
22 Aug 2001 15:20

Sent by: Lindsey KELLOW@HSBC

To: George Wendler  
cc: Iain Stewart, et al

Our Ref: GHQ CRF 011680 Your Ref:  
Subject: NON-CIB GROUP: HAIM SABAN FAMILY GROUP

Dear George

**NON-CIB GROUP: HAIM SABAN FAMILY GROUP**  
**BORROWER: SILVERLIGHT ENTERPRISES LP - GRADE 2**

We concur, subject to your approval and the points raised by Russell Schreiber in his note dated 22 August 2001. Ideally we would wish that Saban guarantee the transaction from the outset; this should be attempted albeit on a best endeavours basis.

Yours sincerely

P L Hargreaves  
Group Financial Risk Controller

pkb/ljk

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HUI 0000720

Permanent Subcommittee on Investigations

EXHIBIT #60a

## Appendices

I	Background	.....	page 5
II	Entities		
	a. Silverlight Enterprises, LP	.....	page 6
	b. Saban – Consolidated	.....	page 8
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III	Collateral Analysis	.....	page 13
IV	Transaction		
	a. Conditions Precedent	.....	page 15
	b. Cash Flows on Settlement	.....	page 15
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V	Liquidation Analysis if planned Disney Acquisition Fail.	.....	page 17
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**I. Background:**

Quellos is a financial and tax advisor specializing in families with net worth in excess of \$200 million. HSBC have been working with Quellos for the past few years. Quellos handles, as an example, the financial matters of James D. Wolfensohn, President of the World Bank and a HSBC Private Client. Quellos has been advising Mr. Saban for the past three years, especially in tax planning.

Haim Saban is well known for introducing Power Rangers to the US entertainment market. He is originally from Egypt and immigrated to Israel, where he became a concert promoter. He lost a lot of money after promoting a Japanese Band to tour Israel, which coincided with the Yom Kippur War. Subsequently, he moved to France where he started producing theme songs for TV shows. In 1980, Saban moved to Los Angeles and began creating sound tracks for cartoons and producing low budget animation cartoons. He later met up with a Japanese friend from the ill-fated Israel tour who became successful in the Japanese children's serial programs. Through this connection, Saban started Saban Entertainment Inc. and in 1993 began to produce a series of children's show "Mighty Morphin Power Rangers" which became an overnight success drawing over 4 million viewers daily and the highest rated weekday show in most key children's demographics. Saban made \$70 million in revenue for the first year and \$10 million in pretax profit. With the enormous profit obtained from the Power Rangers programs and licensing of consumer products, Saban acquired 49.5% interest in Fox Family networks with News Corp as co-owner. Saban also has an agreement with News Corp., which gives him the option to sell his 49.5% ownership of Fox Family to News Corp. News Corp has three choices: a) to buy Saban's stake in cash, b) bring in a partner to buy Saban's stake or c) sell the entire operation. Saban has exercised his option recently and News Corp has decided to sell the entire network. A purchase agreement has been signed in which the network will be sold to Disney for \$ 5.3 billion (\$3.2 billion cash, assumption of debt \$2.1 billion).

Mr. Saban is expected to receive \$1.584 billion cash from the sales proceeds. As part of his investment program, to gain diversification and to minimize his capital gains tax, Mr. Saban has discussed with many tax consultants to seek expert advice. At the suggestion of his attorneys and Quellos, Mr. Saban will be purchasing an offshore entity, Titanium Trading Partners, Inc. which had substantial capital losses that he can use to offset his capital gains from the sale of FFW. To structure this transaction, Silverlight Enterprises L.P., a Saban family partnership will need to borrow \$730 million to purchase Titanium.

Quellos has come to HSBC to execute an arms length transaction. Quellos' stated criteria have been a "full service bank" and price. HSBC has competed successfully against Bank of America and UBS for this business.

As part of the approval of the deal, it is agreed that:

- both Haim Saban and Quellos will acknowledge that the transaction is an arms-length transaction.
- Saban counsel will acknowledge that this is an arms-length transaction.
- Our in-house counsel will opine that HSBC is acting at arms length and that HSBC is not a promoter of the transaction.
- HSBC's out-side counsel as chosen by legal, tentatively Ken Chin of Bingham Dana (previously known as Richards O'Neil), will provide an opinion of counsel stating that HSBC is not a promoter or sponsor of this transaction, rather an arms length counterparty.

The following is a draft of the disclaimer prepared by HBUS legal:

Relationship Between Parties

Each party represents to the other party on the date on which it enters into the Transaction that:

(A) **Non-Reliance.** Each party is acting for its own account, has made its own independent decision to enter into the Transaction and has determined that the Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party agrees and acknowledges that it is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into the Transaction and specifically agrees and acknowledges that information and explanation relating to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into that transaction. No communication (written or oral) with the Transaction shall be deemed to be an assurance or guarantee as to the expected results, benefits, outcomes or characteristics (economic, tax or otherwise) of the Transaction.

(B) **Assessment and Understanding.** Each party is capable of assessing the merits of and understands (on its own behalf or through independent professional advice), and accepts, the terms, conditions and risks of the Transaction. Each party is also capable of assuming and assumes, the risks of the Transaction.

(C) **Status of the Parties.** Neither party is acting as a fiduciary or an adviser to the other party in respect of the Transaction.

Barnville and Jackstones prior to deal:

- Barnville Limited and Jackstones Limited are Isle of Man companies each owned by a trust with mutually overlapping boards. Both Barnville and Jackstones are Investment Companies organized and managed by EURAM Advisors, an SFA regulated investment advisor. EURAM Advisors is a subsidiary of EURAM Bank AG from Vienna Austria. The Barnville and Jackstones boards are different enough so as not to be considered controlled by the same person or group of persons.
- Among other business lines, EURAM Advisors, using among other vehicles Barnville and Jackstones, creates and arranges transactions with institutional and high net worth clients. Some existing clients cannot use loss for tax deductions. They warehouse these losses until a buyer is located who can take advantage of the situation. In this way, the clients can recoup some of the losses. Saban, through his advisor Quellos, is one such person.
- Once Barnville purchases an entity with the shares, Jackstones will short the stock holdings into the market. In this manner, the net position of Jackstones and Barnville are flat. To

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HUI 0000886

Permanent Subcommittee on Investigations  
**EXHIBIT #60b**

secure the short position, Barnville lends the shares that it owns through Titanium to Jackstones.

At deal inception, Jackstones owns 99% of Titanium Trading Partners. EURAM Advisors owns 1% and is the managing member of Titanium Trading Partners. Titanium Trading Partners owns (through purchases of other entities) a portfolio of US shares with substantial tax losses.

Quellos and Saban:


Quellos has developed Saban as a client over the past three to four years as Saban's profile has risen. Additionally, Saban is known to the US Domestic Private bank through other clients. Quellos is now Saban's principal financial and tax advisor.

As an arms length transaction, HSBC does not have a complete knowledge of the tax treatment and is not Saban's tax advisor. However, according to information provided to Quellos, the losses in the stock basket in Titanium Trading mostly offset the gains in FFW. shares moved into Titanium Acquisitions and finally into Titanium Trading. Internally to Titanium Trading, there would be zero tax due at time of sale of FFW. The basis in Titanium Acquisitions will be the sum \$690 million paid for Acquisitions and the original basis of the FFW. Thus, tax is deferred until Titanium Acquisitions is liquidated. Once again, this is information provided to HSBC by Quellos. HSBC has never had a conversation about taxes with Saban.

The deferral of ~\$700-750 million for 5 to 10 years is the economic benefit that provides Quellos with its fee. Assuming a risk free rate on triple tax exempt municipal bonds of 3.75% annually compounded money for five years on \$700 million, Quellos would save Saban ~\$140 million after tax over five years.

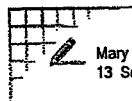
1192

Russell Schreiber/HBUS/HSBC  
09/13/2001 07:12 PM

To Mary Pan/HBUS/HSBC@HSBCAMERICAS  
cc Albert Yu/HBUS/HSBC@HSBCAMERICAS  
bcc  
Re: Silverlight Enterprises, L.P.  
Subject 

In light of the market situation, the stock market will only reopen on Monday 9/17/01 but it may not be feasible to purchase \$760 million of stocks and execute the collar transaction of this size until a few days later when the market is settled. However, to meet business purpose and tax code requirement, Silverlight must be funded by 9/17/01 before we can have the collar in place. Should the simultaneous purchase of the shares and the collar not be executed by 9/30/01, the loan will be due and repaid in full. Approval is thus requested to allow funding of the loan on 9/17/01 (subject to proper documentation) with the funds being placed in a collateralized account in name of Silverlight Enterprises, L.P. until the collar can be executed. Since the loan will be fully secured by cash placed in an overnight money market account controlled by HSBC, approval is recommended.

Mary Pan

 Mary Pan  
13 Sep 2001 19:04

To: Albert Yu, et al  
Subject: Silverlight Enterprises, L.P.

In light of the market situation, the stock market will only reopen on Monday 9/17/01 but it may not be feasible to purchase \$760 million of stocks and execute the collar transaction of this size until a few days later when the market is settled. However, to meet the tax code requirement, Silverlight must be funded by 9/17/01 before we can have the collar in place. Approval is thus requested to allow funding of the loan on 9/17/01 (subject to proper documentation) with the funds being placed in a collateralized account in name of Silverlight Enterprises, L.P. until the collar can be executed. Since the loan will be fully secured by cash placed in an overnight money market account controlled by HSBC, approval is recommended.

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HUI 0004253

Permanent Subcommittee on Investigations  
**EXHIBIT #60c**

**Brian Hanson**

**From:** Chuck Wilk  
**Sent:** Thursday, August 23, 2001 7:25 AM  
**To:** 'Barrie, John'; Phillips, Lana; Chuck Wilk; 'bob\_jason@la.kirkland.com'; 'mkrane@earthlink.net'  
**Cc:** Smith, Elizabeth Ann; Lois, Carla; Badami, Heather Rheiner; Jeff K. Feinglas; Brian Hanson  
**Subject:** RE: timing issues Revised Checklist

First, the opening sentence is incorrect. We will close the bank loan and purchase of Titanium before 8/31/01. This gives us time to distribute NewCo (Titanium Acquisition) contribute Hiam's FFW stock to NewCo/Titanium and make the S election effective September 1, 2001.

The clock is ticking but I know we all work better under pressure.

Feel free to contact us with any questions or concerns.

Regards,  
 Chuck Wilk

-----Original Message-----

**From:** Barrie, John [mailto:jpbarrie@brvancave.com]  
**Sent:** Thursday, August 23, 2001 6:07 AM  
**To:** Phillips, Lana; 'cwilk@quellos.com'; 'bob\_jason@la.kirkland.com'; 'mkrane@earthlink.net'  
**Cc:** Smith, Elizabeth Ann; Lois, Carla; Badami, Heather Rheiner  
**Subject:** RE: timing issues Revised Checklist

Matt - as I believe you are aware, current bank plan is have to loan and acquisition of Titanium occur on August 31- this poses some timing issues and planning thoughts regarding timing of redemption of Sabans' interest in Silverlight and effective date of S election - from a tax standpoint, I think Silverlight ought to hold newco with Titanium at least a day or two to establish factually its ownership interest (important for basis shift) to better avoid argument that ownership is transitory and could be ignored on a step transaction argument - as you know IRS will have that argument in any event but I think it presents a little better picture if there is some actual ownership time as opposed to all of the transactions occurring on 31<sup>st</sup>. If we delay redemption that effectively puts effective date of S election on October 1 instead of September 1 - that one month as a C corporation may not be all that bad from a optics and filing perspective (something we should discuss and weigh the pros and cons) - assuming Fox stock is transferred to newco following redemption and down to Titanium - gain on sale of Fox will match - more or less - loss on sale of Titanium assets - any nominal gain or loss will be reported on a C corporation 1120 - without a passthrough - which might have interest from a filing perspective

- if any net gain - it would be taxed at corporate rates and not individual capital gain rate - and any loss might be trapped in the corporation - further - if any net gain - that would create E & P which would have to be eliminated as a dividend (double tax although should be nominal) for the S election to avoid 1375 issues (and potential loss of S election after 3 years) but that should not be a big deal - your numbers should show what anticipated difference between Fox gain and sale of loss securities will likely be - on a more costlier note - if transaction is challenged and IRS were to be successful in not allowing offset - then all of Fox gain could be taxed at corporate rates - 35% vs. 20% individual capital gain rate - with no basis increase in corporate stock - other option would be to speed up bank closing and aquisition of Titanium a couple of days - to say August 29

Permanent Subcommittee on Investigations

EXHIBIT #61a

PSI-QUEL 23140

- and then distribute newco to Sabans on August 31 - so there could be an effective S election beginning on September 1 - assume Fox stock would still be contributed downstream to Titanium so that gain and loss will be matched at partnership level and any net gain or loss will flow up to Sabans

Lastly, we should discuss document execution timing - I assume you have - or are about to have - all of Silverlight restructuring in place - do we have a redemption agreement for Sabans' interest and have determined redemption price and amount of interest (all or partial) that will be redeemed  
I am available to discuss at your convenience - John

John P. Barrie  
Bryan Cave LLP  
700 13<sup>th</sup> Street NW Suite 700  
Washington DC 20005  
202-508-6051  
202-508-6200 (fax)  
[jbarrie@bryancave.com](mailto:jbarrie@bryancave.com)  
cell - 202-262-3814

-----Original Message-----

**From:** Phillips, Lana  
**Sent:** Monday, August 20, 2001 2:51 PM  
**To:** 'cwilk@quellos.com'; 'bob\_jason@la.kirkland.com'; 'mkrane@earthlink.net'  
**Cc:** Barrie, John; Smith, Elizabeth Ann; Lois, Carla; Rheiner, Heather S.  
**Subject:** Revised Checklist

<< File: 631f011.DOC >>  
Chuck, Matt, and Bob:

Attached is a revised checklist of the corporate documents our office has drafted to date. Please let us know which of these documents you prefer to review so that we may email them to you. We are still waiting to review drafts of the lending documents, so please forward them on to us once you receive them.

We would also like to begin the process of applying for California qualification for Titanium Acquisition Corp. (TAC) and Titanium Trading Partners LLC. We will need the original signature of Haim Saban on the TAC document, so I will need to coordinate with Matt on how to get this done.

We look forward to hearing from you.

Regards,

Lana M. Phillips  
Associate  
Bryan Cave LLP

Tel: 212-692-1894  
email: [lmphillips@bryancave.com](mailto:lmphillips@bryancave.com)



**Brian Hanson**

---

**From:** Chuck Wilk  
**Sent:** Friday, August 24, 2001 10:15 AM  
**To:** 'Barrie, John'; Brian Hanson  
**Subject:** RE: Purchase Agreement

I thought the portfolio was an attachment to this agreement. If it is not I see no problem including purchase date with stock contributed.

Chuck

-----Original Message-----  
**From:** Barrie, John [mailto:jbarrie@bryancave.com]  
**Sent:** Friday, August 24, 2001 10:07 AM  
**To:** cwilk@quellos.com  
**Subject:** RE: Purchase Agreement

further thought -on contribution agreement - should info noted below be included either as an attachment or additional item for appendix?

-----Original Message-----  
**From:** Chuck Wilk <cwilk@quellos.com>  
**Sent:** Friday, August 24, 2001 1:00 PM  
**To:** Barrie, John  
**Cc:** Smith, Elizabeth Ann  
**Subject:** RE: Purchase Agreement

John,

They will not rep to US tax basis. They do not keep US tax books. What they will do is produce accountants letter/report as to the purchase date of the securities. Since they are all market traded securities knowing the purchase dates gives you the original cost basis.

chuck

-----Original Message-----  
**From:** Barrie, John [mailto:jbarrie@bryancave.com]  
**Sent:** Friday, August 24, 2001 9:51 AM  
**To:** 'cwilk@quellos.com'  
**Cc:** Smith, Elizabeth Ann  
**Subject:** Purchase Agreement

Chuck - would purchase agreement be a good place to add a rep/warranty regarding tax/cost basis of securities that will be in Titanium - maybe add to 4 - Vendor Warranties - at end (H) Tax basis of Portfolio is a set forth in Schedule \_\_ attached hereto.

John P. Barrie  
 Bryan Cave LLP  
 700 13th Street NW Suite 700  
 Washington, DC 20005  
 202-508-6051  
 202-508-6200 (fax)  
 jbarrie@bryancave.com

Permanent Subcommittee on Investigations <b>EXHIBIT #61b</b>
---

PSI-QUEL 23139

6/24/01 email

John P. Barrie

Brian M. Hanson, Chris M. Hirata, Chuck H. Wilk

Titanium Profitability - John,

At the request of Chuck Wilk, I have attached the following file detailing various profitability scenarios for Titanium Trading Partners LLC based on a 120 day period.

The profitability shown is the result of purchasing a basket with a purchase price of \$689,565,500 and collaring it by purchasing a fully down side protected 100% put option and selling a call option with a strike price of 108%. The net cost of the collar is \$24,962,271. It should be noted that the collar pricing was provided by HSBC and is only indicative pricing. Actual execution pricing is likely to change from the example shown. The term of the collar is 120 days and the collar unwind values reflect the value of the collar at expiration for each given profitability scenario.

Other fees included in the analysis include financing costs of \$4,363,400, a loan fee of \$1,000,000 and a structuring fee of \$7,600,000.

Returns are calculated based on the sum of the costs of the collar, financing, loan fee and structuring fees as a percentage of the net gain/(loss) for each profitability scenario. Annualized returns are computed by periodically compounding the the given periodic returns. Let use the up 5% scenario as an example:

(24,962,271)		
(4,363,400)		
(1,000,000)		
(7,600,000)		
(37,925,671)		
(3,447,396)	9.09%	-30.29%

I hope this email makes your review somewhat more simplified. However, if you have any questions regarding this analysis, please feel free to give either myself a call at (206) 613-6732 or Chuck at (206) 613-6751.

Thanks and regards,  
Brian

Permanent Subcommittee on Investigations

EXHIBIT #61c

PSI-QUEL 39471

**Brian Hanson**

**From:** Phillips, Lana [lphilips@BryanCave.com]  
**Sent:** Tuesday, September 04, 2001 6:53 PM  
**To:** Brian Hanson (E-mail); 'arfan.shaikh@euramgroup.com'  
**Cc:** Badami, Heather Rheiner  
**Subject:** Revised Consents



61m3041.DOC

<<61m3041.DOC>>

To all:

Attached are the revised consents regarding Titanium Trading Partners LLC -- these incorporate most of Arfan's suggestions. Two things I did not include are:

(1) These 4 consents were drafted in one document to make them easier for us to keep track of. Unfortunately, when they were drafted they were not done in any particular order, so that when you open the whole document to print, the order of the consents inside seems a bit confusing. Sorry about this. I'd rather not indicate the sequence of these documents in their titles because the creation and ownership of the LLC by Barnville and EAICS must be completely independent from the later transfer to and ownership by TAC and [REDACTED]. Showing a clear sequence seems to betray that independence.

When these documents are sent to be executed, we will place them in correct order and give explicit instructions as to the order of signing. To make your review easier for now, I have included boxes in the upper right-hand corner stating "DRAFT - Document \_\_\_\_". This should also make it more clear for purposes of distributing these consents around for approval. Once we've received final approval, we will take off the "DRAFT" legend and send out final copies for signature. (I will also be sure to take off the document number from these docs.)

Please let me know if this poses a problem for anyone.

(2) Regarding Arfan's comment regarding the "Letter Agreement/Consent Barnville/EAICS" in his email dated yesterday (Tues.) -- Because our operating agreement now says that EAICS is receiving its membership interest in exchange for investment management services (rather than managing member services), it seems no longer appropriate for this consent to state that EAICS is getting its 1% interest as the managing member and tax matters member. Also, because the Operating Agreement explicitly spells out what the members are getting in exchange for their LLC interests (i.e., Barnville is contributing portfolio, EAICS is contributing investment services), it seems inappropriate to include any of that information in this consent.

Again, please let me know ASAP if anyone disagrees. I know that both Arfan and Brian need to circulate these, so I will IMMEDIATELY incorporate any change you feel necessary. I will also be available to sit in on a call if we need it! Heather might be available, as well?

Arfan, if you anticipate changes, go ahead and email me and I will make the changes as soon as I get to the office.

Thank you,  
 Lana

Permanent Subcommittee on Investigations  
**EXHIBIT #61d**

PSI-QUEL 23126

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6/3/02 email

Elizabeth A. Smith

Chuck H. Wilk

Betsy,  
I have a meeting with Mr. Saban late Tuesday in LA. I realize you have not yet completed your review of Matt's materials but would it be reasonable to assume (and I am sure Haim will ask) that the opinion should be done by the end of June? I also realize that this is predicated on an agreement on scope and price and the delivery by us of certain materials and documents you need to review. By the way if the list of documents you want to see is compiled by Tuesday I can take it to LA with me.  
Regards,  
Chuck

Permanent Subcommittee on Investigations

EXHIBIT #61e

PSI-QUEL 39554

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From: Chuck Wilk  
 Sent: Friday, December 17, 1999 6:16 PM  
 To: 'michael@zilkha.com'; 'jromano@zilkha.com'  
 Cc: Larry Scheinfeld  
 Subject: POINT trade

Update on Status of Trade:

I had a meeting this week with Lew Steinberg of Cravath Swaine & Moore to finalize the draft of the opinion and to review the economics of the trade. All is moving forward and Lew is attempting to have a draft opinion for our review in the next two weeks (holidays permitting). Jeff Greenstein is reviewing the current economic model and after receiving his comments we should be able to deliver, after the holidays, an economic model. We believe that after reviewing the merits of this trade you will conclude, as we have, that this trade both economically and structurally (thanks to Cravath's input) is more robust than the other trades in the marketplace. If this timeframe does not meet your objectives please let us know and we will attempt to accelerate the process. Have a safe and happy holiday season and we look forward to meeting in early 2000.

Regards,  
 Chuck Wilk

Permanent Subcommittee on Investigations  
**EXHIBIT #62a**

PSI-QUEL 1:

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**From:** Christopher Hirata  
**Sent:** Tuesday, April 25, 2000 8:04 PM  
**To:** 'jstaddon@attglobal.net'  
**Cc:** Chuck Wilk  
**Subject:** POINT  
**Importance:** High

John,

Mr. Johnson is ready to pursue the POINT strategy and would like to wire funds (possibly Wednesday, April 26th) and sign documents (possibly on Thursday, April 27th). To accomplish this, we will need the wire instructions necessary for the purchase of the SPV (i.e. the bank account for the IOM Company). Also, if tomorrow (Wednesday) you prepare and sign the necessary documents they can be Federal Expressed (overnight) to Mr. Johnson's office (or alternatively, Quadra-New York) for signature on Thursday. Based on current market volatility it will be beneficial to sell the SPV as soon as possible after the shares are transferred to the SPV and the long-dated Warrant is issued. We will simultaneously with the purchase put the collar in place (i.e. long put short call) (we assume the same wiring instructions will apply for the net collar payment?). If you have any suggestions to try to expedite this process please let us know. Also, we have been attempting (unsuccessfully) to fax a draft opinion to you. If you could contact Pam Mattys (206-613-6700), she will attempt to deliver the opinion to you.

During our phone conference with Lew Steinberg, we concluded that on 12/31/00 we would have a portion of the loan balance outstanding, we would have the SPV purchase (which poses an issue as how to purchase without cash) an instrument equal in value to the outstanding loan balance (and if possible with an interest rate exceeding the loan interest rate-this too poses a dilemma) and that there would be no put right of set-off or any other device that would limit the borrower's/Woody's obligation to satisfy the loan. 1/01/01 or thereafter things can change.

Woodglen I, LLC will be purchasing the majority of the SPV (we believe 99.9%), and Woodglen I, Inc. will be purchasing the remainder (0.1%). We will verify the exact figures tomorrow.

The documents should be sent to the following address:

Mr. Joel Latman  
The Johnson Company, Inc.  
630 Fifth Avenue, Suite 1510  
New York, NY 10111  
PH: (212) 332-7500

Please contact Chuck and/or me if you have any questions. As always, thanks for all the assistance.

Regards,

Chris Hirata  
Quadra Custom Strategies, LLC  
Phone: (206) 613-6700  
Fax: (206) 613-6713

This message and any attachments may contain confidential information and is intended only for the individual or individuals named. All electronic mail sent to or from this address will be received by Quadra Financial Group, L.P. or an affiliate's electronic mail system and is subject to retention and review by someone other than the party to whom such mail was addressed. If you are not a named addressee you should not disseminate, distribute or copy this electronic mail. Please notify the sender immediately by electronic mail if you have received this electronic mail by mistake and delete this electronic mail from your system. Electronic mail transmission cannot be guaranteed to be secure or error-free, and may be arrive later than intended, be intercepted, corrupted, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message which arise as a result of defects due to transmission. This message is provided for informational purposes only and should not be construed as a solicitation or offer to buy or sell any securities or related financial instruments.

Permanent Subcommittee on Investigations

EXHIBIT #62b

PSI-QUEL 10859

**From:** Jeff Greenstein  
**Sent:** September 11, 2000 05:28  
**To:** 'Andrew J Robbins'; Chuck Wilk  
**Cc:** Larry Scheinfeld  
**Subject:** RE: [REDACTED]

[REDACTED] = Redacted by the Permanent  
 Subcommittee on Investigations

Andy - let me know how you want to follow up on this. I am in Hawaii this week but will be reachable. Unfortunately there is no way to play the downward move in the portfolio. Additionally even if there was this would contradict the whole business purpose for purchasing the SPV in the first place. I will coordinate with Hirata so we can get the potential companies for their input. Also Norm has a call Monday am with Bank America to keep that process moving

-----Original Message-----

**From:** Andrew J Robbins  
**Sent:** Tuesday, September 05, 2000 8:26 AM  
**To:** Chuck Wilk; Jeff Greenstein  
**Cc:** Larry Scheinfeld  
**Subject:** [REDACTED]

I spoke with Leslie Levine and Rick Bronstein today. Rick said he was comfortable with what he reviewed and Leslie said that they were basically ready to go. Rick would like to see some revised pricing on the collar and profitability scenarios given that he knows that the we are not in the same market as we were in April. Do we need to speak with Cravath to be certain as to where to strike the call in order to provide enough economics or do we already know this? They also asked whether they could create some profit potential on the down side of the collar if they wanted to take a bet on the short side - any thoughts? Can we forward them a list of positions to review to perhaps customize their basket?

I reiterated a drop dead date of September 30th although given their present dispensation for getting the deal done this should not present a problem.

Permanent Subcommittee on Investigations  
 EXHIBIT #62c

PSI-QUEL 25002

1202

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OF COUNSEL:  
CHRISTINE MESHAH

MEMORANDUM FOR R. W. JOHNSON, IV

POINTS

August 29, 2000

Enclosed please find an executed copy of the  
Cravath, Swaine & Moore tax opinion with respect to the  
above-referenced transaction.

Best regards.

Alyssa F. Wolpin

Robert W. Johnson, IV  
c/o Joel Latman  
Johnson Company, Inc.  
630 Fifth Avenue, Suite 1510  
New York, NY 10111

Encls.

387a

BY HAND

Permanent Subcommittee on Investigations  
EXHIBIT #62d

PSI-RWJ 000241



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OF COUNSEL  
CHRISTINE RESNAR

August 29, 2000

Ladies and Gentlemen:

You have requested our opinion regarding the U.S. Federal income tax treatment of a U.S. investor ("Investor") who purchases a limited liability company membership interest under the following circumstances (the "Proposed Transaction").

Our opinion is based on the Internal Revenue Code of 1986, as amended (the "Code"), the Treasury Regulations thereunder, judicial and administrative authority as of the date hereof, and the factual assumptions set forth herein, changes to any of which could affect the analysis and conclusions stated herein.

#### Proposed Transaction Structure

Investor proposes to purchase a 99.9 percent membership interest in a non-U.S. limited liability company ("SPV") taxable as a partnership for U.S. Federal income tax purposes.<sup>1</sup> SPV was formed by a non-U.S. investment fund ("Fund")<sup>2</sup> to serve as a bankruptcy remote vehicle for issuing out-of-the-money covered warrants (the "Covered Warrants") to persons unrelated to Fund or Investor on a basket of publicly-traded stocks issued by various U.S. corporations.<sup>3</sup> Fund transferred shares of the stocks

<sup>1</sup> A 0.1% membership interest in SPV will be purchased by a U.S. investor who is related to Investor within the meaning of Section 318 of the Code ("Related Purchaser").

<sup>2</sup> A 0.1% membership interest in SPV is held by European American Corporate Services Limited ("EACS").

<sup>3</sup> Fund utilized SPV to issue the Covered Warrants because its implicit credit rating was insufficient to enable it to

comprising the basket (the "Stocks") to SPV prior to the issuance of the Covered Warrants. The Covered Warrants have a maturity of five years and a strike price equal to 150 percent of the aggregate trading price at the time the Covered Warrants were issued of the Stocks. The indenture with respect to the Covered Warrants provides that SPV must at all times hold either the Stocks or, if SPV holds less than all the Stocks (such difference the "Unhedged Position"), other marketable securities with an aggregate fair market value equal to at least three times the fair market value of the Unhedged Position. Prior to the sale of the SPV membership interests to Investor, SPV hedged its economic exposure with respect to the Covered Warrants by holding shares of the Stocks.

The Covered Warrants are callable by SPV pursuant to exercise of a call right (the "Call") and are puttable by the distribution agent (the "Distribution Agent") for the Covered Warrants pursuant to exercise of a put right (the "Put").<sup>4</sup> SPV will hold the aggregate premium received with respect to the issuance of the Covered Warrants in a collateral account until the Put and Call lapse or are exercised. Amounts held in the collateral account are invested in short-term money market securities (the "Collateral").

Subsequent to Fund's purchase of the Stocks and prior to Fund's transfer of the Stocks to SPV, the aggregate trading price of the Stocks declined and Fund/SPV has an unrealized loss for U.S. Federal income tax purposes in the Stocks. Fund now wishes to terminate its economic exposure to the Covered Warrants and the Stocks and capture the bid-ask spread created by the Covered Warrants. Therefore, Fund

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issue the Covered Warrants directly. SPV is one of several special purpose vehicles that Fund has created, or intends to create, in order to capture the bid-ask spread created by issuing covered warrants with respect to various stocks.

<sup>4</sup> The Call has a 9 month maturity and a strike price that varies directly with the aggregate trading price of the Stocks. The Put has a 9 month maturity and a strike price equal to 100% of the initial premium for the Covered Warrants plus accrued interest on that premium, provided, however, that the Put will expire upon the Distribution Agent's placement of the Covered Warrants with third party investors. The terms of the Covered Warrants require SPV to notify the Distribution Agent prior to exercising the Call if and only if the Distribution Agent has not yet placed the Covered Warrants with third party investors.

proposes to sell 99.9<sup>9</sup> percent of the total membership interests in SPV to Investor. Concurrently, Related Purchaser will purchase 0.1 percent of the total membership interests in SPV from EACS. At the time that Investor purchases the membership interests, SPV will hold the Stocks and the Collateral and will be earning a money market return with respect to the Collateral.<sup>5</sup>

Investor intends to finance its purchase (the "Purchase") of the SPV membership interests through a loan (the "Loan") from Fund.<sup>6</sup> The Loan will be recourse to Investor.<sup>7</sup> However, provided that SPV holds collateral having a fair market value at least equal to 100 to 200 percent (depending on the nature of the collateral) of the outstanding principal amount of the Loan,<sup>8</sup> Fund will, in the event of a default, look first to Investor's membership interests in SPV for satisfaction of the outstanding amounts.

At the time of the Purchase, it is anticipated that SPV will hedge some of its downside risk with respect to the Stocks by entering into a 125-day collar (the "Collar").<sup>9</sup> The counterparty to the Collar may be Fund or a party related to Fund. The spread between the strike prices of the put and call that comprise the Collar will be between 5 and 11 percent of the current aggregate trading prices of the Stocks.<sup>10</sup> The term of the Collar will be for a period

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<sup>5</sup> We assume that the Stocks are non-dividend paying.

<sup>6</sup> Related Purchaser intends to finance its purchase of its SPV membership interests with a loan from EACS. Quadra Capital Management, L.P. ("Quadra"), an experienced money manager, would likely assist Investor in arranging the Loan.

<sup>7</sup> We assume that Investor is credit-worthy.

<sup>8</sup> This collateral will be in addition to any Collateral held by SPV with respect to the Covered Warrants, as described above.

<sup>9</sup> The Collar can be cash-settled or physically settled, at the option of SPV.

<sup>10</sup> The put will have a strike price equal to 100% of the aggregate trading price of the Stocks at the time the Collar is entered into, and the call will have a strike price equal to 110% of the aggregate trading price of the Stocks at the time the Collar is entered into.

substantially less than the term of the Covered Warrants. Therefore, if the Collar expires, Investor will again be fully exposed to downside risk with respect to the Stocks for the remaining duration of the Covered Warrants; if the Covered Warrants expire unexercised, Investor will bear full economic upside and downside exposure with respect to the

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If some shares of the Stocks have appreciated at the time Investor enters into the Collar such that the fair market value of such shares (the "Appreciated Shares") at that time is greater than their adjusted tax basis, Investor might be subject to the "constructive sale rules." Under the constructive sale rules, a taxpayer who holds an appreciated "position" in a stock, partnership interest or debt instrument and enters into certain enumerated hedging transactions is generally treated as having disposed of such appreciated position in a taxable transaction. I.R.C. § 1259. Note that § 1259 only applies to trigger the recognition of gain, and cannot be used to accelerate the recognition of a taxable loss. Although the constructive sale rules do not currently apply to the purchase or sale of options as part of a collar transaction, the Internal Revenue Service is granted authority to issue regulations to encompass transactions that essentially eliminate substantially all of the taxpayer's risk of loss and opportunity for income or gain with respect to the applicable appreciated position. I.R.C. § 1259(c)(1)(E); S. Rep. No. 105-33 at 126 (1977); H.R. Rep. 105-148 at 442 (1997). See also Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in 1997 at 177 (Dec. 17, 1997). Such regulations can be applied retroactively in "abuse" cases. Generally a 5-year or shorter collar transaction with respect to stock of average volatility should not be considered abusive if (i) the spread between the exercise prices of the put and call is at least 20% of the underlying stock's current fair market value (the "spot price"), (ii) the exercise price of the put is not higher than the spot price and (iii) the exercise price of the call is not lower than the spot price. See New York State Bar Association Tax Section, Committee on Financial Instruments, Proposed Legislation Regarding 'Short-Against-the-Box' Transactions, Tax Notes Today 46-35 (1996). The Collar, either alone or in conjunction with the Covered Warrants, is not described by that safe harbor. If the application of § 1259 to the Collar resulted in a deemed disposition by Investor of the Appreciated Shares (if any), the tax basis of the Appreciated Shares deemed sold would be stepped up to fair market value and Investor's holding period for the Appreciated Shares would begin anew.

Stocks for the remaining duration of SPV's holding period with respect to the Stocks.

After consultation with its investment advisor, Quadra, Investor may cause SPV to dispose of some or all of the shares of the Stocks.<sup>11</sup> Such dispositions could be effected through sales on the open market and/or pursuant to exercise of the put or call options comprising the Collar (a "Stock Disposition").<sup>12</sup>

It is anticipated that there will not be in place an election under Sections 743 and 754 of the Code with respect to SPV at the time of the Purchase. The Purchase will result in a constructive termination of SPV pursuant to Section 708 of the Code.

As a result of the Purchase, Investor anticipates earning an annualized pre-tax return on its net purchase price for the SPV membership interests, taking into account interest expense on the Loan and transaction expenses (including any expenses associated with the Collar, the Loan or the Purchase), that is substantial (attributable to the earnings on the Collateral and the upside potential with respect to the Stocks) in relation to the potential U.S. Federal income tax benefits attributable to the built-in loss in the Stocks held by SPV. While Investor is aware of such potential U.S. Federal income tax benefits, one of Investor's purposes in acquiring the SPV membership interests is to earn this attractive pre-tax return.

#### Discussion

Economic Substance Doctrine. In connection with the Proposed Transaction, you have asked our opinion as to whether common law economic substance and business purpose

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<sup>11</sup> In the event that Investor causes SPV to dispose of most of the shares of the Stocks, SPV will likely exercise the Call in order to repurchase the Covered Warrants. Alternatively, if the Distribution Agent has not yet placed the Covered Warrants with third party investors, the Distribution Agent could exercise the Put.

<sup>12</sup> In such case, SPV may distribute all or part of the proceeds of any Stock Disposition (after satisfaction of SPV's obligations in respect of administrative fees and unwind costs with respect to the Collar and/or the Covered Warrants) to its members. Investor would generally be required first to apply any such distribution to reduce the outstanding amount of the Loan.

principles will apply to deny Investor a deduction with respect to its allocable share of any loss recognized by SPV on a Stock Disposition.

We are of opinion that, for U.S. Federal income tax purposes, it is more likely than not that the economic substance and business purpose doctrines will not apply to deny Investor a deduction with respect to its allocable share of any loss recognized by SPV on a Stock Disposition because Investor will have an objective potential for earning pre-tax profit and a subjective business purpose for engaging in the Proposed Transaction.

The economic substance and business purpose doctrines (collectively, the "economic substance doctrine") are a common law construct that has been applied to disallow losses in transactions that produce no (or negligible) economic profit, and that serve no independent purpose other than tax avoidance.<sup>13</sup> Generally, a transaction will be considered to lack economic substance if the transaction fails to meet at least one of two tests, namely (i) an objective pre-tax profit potential test or (ii) a subjective business purpose test.<sup>14</sup>

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<sup>13</sup> See generally *ACM Partnership v. Commissioner*, T.C.M. 1997-115 (finding that a strategy involving contingent payment installment sales to generate noneconomic capital losses that could be carried back to offset taxpayer's prior year capital gains had no economic substance because there was no reasonable prospect for taxpayer to achieve a positive pre-tax return from the strategy, taking into account transaction costs, and the strategy did not advance taxpayer's proffered liability management purpose).

<sup>14</sup> See, e.g., *Saba Partnership, et al. v. Commissioner*, T.C.M. 1999-359 (Oct. 27, 1999) (taxpayer could not recognize losses from the disposition of contingent installment sale notes where transaction did not alter taxpayer's pre-tax position and taxpayer's analysis focused on the transaction's tax benefits); *Winn-Dixie Stores v. Commissioner*, 113 T.C. 21 (Oct. 19, 1999) (deduction for interest and fees with respect to leveraged corporate-owned life insurance program denied where program was almost certain to produce pre-tax losses and there was no evidence of a bona fide business purpose); *Compaq Computer Corp. v. Commissioner*, 113 T.C. 17 (Sept. 21, 1999) (taxpayer's claim for foreign tax credit disallowed where no reasonable prospect for profit without regard to the tax benefit of the foreign tax credit and transaction was marketed as a tax reduction scheme with no other business purpose).

The objective pre-tax profit potential test involves an objective inquiry into whether, by entering into the transaction, the taxpayer had a reasonable potential to earn a pre-tax profit, taking into account all transaction costs.<sup>15</sup> In connection with this inquiry, the absence of economic risk to the taxpayer from the transaction is a factor tending to refute the potential for a pre-tax profit.<sup>16</sup> Furthermore, a remote possibility of pre-tax profit,<sup>17</sup> or the possibility of pre-tax profit that is unreasonably small when compared with the tax benefits attributable to the transaction, is insufficient to satisfy this test.<sup>18</sup>

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<sup>15</sup> See, e.g., *Saba*, T.C.M. 1999-359 (Court found that taxpayer had a guaranteed pre-tax net economic loss from the transaction after accounting for transaction costs).

<sup>16</sup> See, e.g., *Compaq*, 113 T.C. 17 (scheme was marketed to Compaq as a tax reduction scheme that was structured to eliminate typical market risks), *citing* *Yosha v. Commissioner*, 861 F.2d 494, 500-501 (7th Cir. 1988), *aff'g* *Glass v. Commissioner*, 87 T.C. 1087 (1986) (transactions that involve no market risks are not economically substantial transactions; they are mere tax artifices).

<sup>17</sup> See, e.g., *Goldstein v. Commissioner*, 364 F.2d 374 (2d Cir. 1966) (interest deductions denied in absence of independent profit motive).

<sup>18</sup> Although the Court has not established a threshold for the amount of pre-tax profit required to satisfy the pre-tax profit potential test, the case law suggests that the test will be satisfied as long as the pre-tax profit potential is not merely nominal. In *Glass v. Commissioner*, 87 T.C. 1087 (1986), the Court observed that a "very small" net economic gain might result from the closed straddle transaction that was the subject of dispute, but after comparing the potential nominal economic gains with the prearranged and "very substantial" tax losses anticipated in the first year of the straddle, the Court concluded that the transaction lacked economic substance. In *Sheldon v. Commissioner*, 94 T.C. 738 (1990) the Court noted that a transaction resulting in expected pre-tax profit that was "infinitesimally nominal and vastly insignificant when considered in comparison with the claimed deductions" had no economic substance.

The small quantum of economic profit needed to satisfy the test is believed to be one reason the Clinton Administration has sought a legislative change in this area. See Treasury Department, The Problem of Corporate Tax

The subjective business purpose test involves a subjective inquiry into whether the taxpayer carried out the transaction for a valid business purpose other than obtaining tax benefits. This inquiry, in turn, looks at whether the transaction is rationally related to a non-tax purpose that is plausible in light of the taxpayer's conduct, economic situation and relevant commercial practices.<sup>19</sup>

The economic substance doctrine has been applied relatively broadly. It is not limited to tax benefits that, by statute, are required to arise from profit-making activities.<sup>20</sup> In addition, the doctrine has been applied to transactions that were entered into and negotiated at arm's-length and were real (not fictitious) arrangements.<sup>21</sup> Then,

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Shelters: Discussion, Analysis and Legislative Proposals, at 13 (July 1, 1999) ("Corporate tax shelters can arise even in transactions that produce more than a negligible amount of pre-tax economic profit.") The Treasury Department has also cited the inconsistency with which courts have applied the pre-tax profit potential test (and, more generally, the economic substance doctrine) as a reason for legislative change. See id. at 94, 99. For a description of the legislative proposals, see id. (defining a tax avoidance transaction as any transaction in which the reasonably expected pre-tax profit (taking into account transaction costs) of the transaction is "insignificant" relative to the reasonably expected net tax benefits (each calculated on a present value basis)); see also Notice 98-5, 1998-3 I.R.B. 49 (disallowing foreign tax credits arising from certain transactions that produce an "insubstantial" economic profit in comparison to the value of the foreign tax credits obtained in the transaction).

<sup>19</sup> See, e.g., *Cherin v. Commissioner* 89 T.C. 986 (1987) ("Realistic potential for profit is found . . . when the transaction is carefully conceived and planned in accordance with standards applicable to the particular industry . . .").

<sup>20</sup> See, e.g., *Goldstein v. Commissioner*, 364 F.2d 734 (2d Cir. 1966) (interest deductions denied even though the Internal Revenue Code, on its face, appeared to grant such deductions unconditionally).

<sup>21</sup> See, e.g., id. (denying interest deduction even though indebtedness was enforceable with full recourse and investments were exposed to market risk where transaction was not "economically rational" without regard to expected



too, the doctrine has not been limited to any particular provision of the Code but has been applied more generally.<sup>22</sup>

The Internal Revenue Service ("IRS") could attempt to apply the economic substance doctrine to disallow losses allocated to Investor by SPV with respect to a Stock Disposition. In order to apply the doctrine to disallow this tax benefit, however, the IRS would have to show both that the Proposed Transaction had no potential for pre-tax profit and that Investor had no business purpose for entering into the Proposed Transaction other than to obtain tax benefits.

We believe it is more likely than not that the economic substance doctrine will not apply to deny Investor a deduction with respect to its allocable share of a loss (if any) on a Stock Disposition since the Proposed Transaction meets the objective pre-tax profit potential test. In the Proposed Transaction, Investor is expected to realize a pre-tax profit, even taking into account transaction costs and interest expense on the Loan. Moreover, it is anticipated that the pre-tax profit will be significant in comparison to the tax benefit attributable to any loss allocated to Investor with respect to a Stock Disposition.<sup>23</sup>

Furthermore, Investor will have a valid non-tax reason for entering into the Proposed Transaction: Investor will purchase the SPV membership interests, in part, because an investment in these interests provides an opportunity to earn an attractive pre-tax yield.

Finally, the economic substance doctrine is intended to prevent taxpayers with no real economic stake in the transaction from claiming deductions for tax losses that do not represent real economic costs. For example, the IRS

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tax benefits).

<sup>22</sup> See ACM Partnership, T.C.M. 1997-115 (The "principle . . . is not limited to corporate reorganizations, but rather applies to the federal taxing statutes generally."), citing Weller v. Commissioner, 270 F.2d 294, 297 (3d Cir. 1959), aff'g Emmons v. Commissioner, 31 T.C. 26 (1958) and Weller v. Commissioner, 31 T.C. 33 (1958).

<sup>23</sup> This assumes, as we understand to be the case, that Investor has no plan to dispose of its membership interests in SPV in the foreseeable future, but will continue to use SPV as an investment vehicle.

might argue that, by entering into the Collar, SPV will have divested itself of all downside risk with respect to the Stocks. However, Investor will not divest itself of all the upside potential with respect to its membership interests in SPV. Moreover, upon the expiration of the Collar, Investor will again bear full downside risk with respect to the Stocks for the duration of SPV's holding period with respect to the Stocks. Accordingly, we believe that the IRS would, more likely than not, not be successful in any attempt to apply the economic substance doctrine to deny Investor a deduction for its allocable share of any loss recognized with respect to a Stock Disposition.

Partnership Anti-Abuse Regulations. You have asked our opinion as to whether the IRS would be successful if it were to attempt to deny Investor a deduction for its allocable share of any loss recognized with respect to a Stock Disposition by applying the partnership anti-abuse regulations set forth in Treasury Regulation Section 1.701-2 (the "Partnership Anti-Abuse Regulations"). We are of opinion that, more likely than not, the IRS would not be successful in any such attempt.

The Partnership Anti-Abuse Regulations grant the IRS authority to recast a transaction if a partnership is formed or availed of in connection with such transaction and a principal purpose of such transaction is to reduce substantially the present value of the partners' aggregate U.S. Federal tax liability in a manner that is inconsistent with the intent of subchapter K of the Code (which governs partnerships).<sup>24</sup> In such case, the IRS is granted authority to, among other recharacterizations, disregard the partnership in whole or in part or otherwise to adjust or modify the claimed tax treatment.<sup>25</sup>

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<sup>24</sup> Treas. Reg. § 1.701-2(a), (b). The intent of subchapter K is to permit the conduct of joint business (including investment) activities without incurring an entity-level tax, subject to three requirements: (i) the partnership must be bona fide and the transaction under scrutiny must have a substantial business purpose; (ii) the transaction must not run afoul of the substance-over-form principles; and (iii) the tax consequences of the transaction must properly reflect the partners' income unless any deviation from this standard is clearly contemplated by the applicable provision of the Code or Treasury Regulations. Treas. Reg. § 1.701-2(a).

<sup>25</sup> Treas. Reg. §§ 1.701-2(b), 1.702-2(e).

With respect to the Proposed Transaction, the IRS might argue that the failure to cause Fund to make an election under Sections 743 and 754 of the Code to step down the basis in the SPV assets upon the Purchase is inconsistent with the intent of subchapter K. Accordingly, the IRS might attempt to disregard the existence of SPV and treat Investor as though it bought the Stocks and other assets of SPV directly (with the result that Investor would receive a cost basis in the Stocks) or otherwise to deny Investor a deduction with respect to its allocable share of any loss recognized on a Stock Disposition. However, we believe that the IRS would, more likely than not, fail in any such attempt to recast the Proposed Transaction because (i) as discussed above, SPV is a bona fide partnership entered into for a substantial business purpose, (ii) the substance of the Proposed Transaction is consistent with its form (i.e., SPV was formed as, and in fact is, an investment partnership) and (iii) even though the failure to make a Code Section 754 election with respect to the Purchase may lead to a timing benefit to Investor, Congress clearly contemplated this possibility when it made Section 754 elective.

The applicability of the Partnership Anti-Abuse Regulations requires a facts and circumstances analysis of the transaction at issue. This analysis, in turn, requires a comparison of the purported business purpose of the transaction with the claimed tax benefits resulting from the transaction.<sup>26</sup> As discussed above, the Proposed Transaction provides Investor with an attractive investment opportunity that has a substantial annualized investment yield. The return on this investment is attractive even in the absence of any loss realized on a Stock Disposition. In addition, the Proposed Transaction does not possess the negative factors (enumerated in the applicable Treasury Regulations) that tend to indicate a purpose inconsistent with subchapter K.<sup>27</sup>

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<sup>26</sup> Treas. Reg. § 1.701-2(c).

<sup>27</sup> With respect to the formation of SPV: (i) Fund could only issue the Covered Warrants, and thereby earn the resulting premium income, by forming SPV; (ii) Fund had substantially more than a nominal interest in SPV, participated in the profits of SPV, and retained some upside potential, and was not protected from downside risk, with respect to the SPV assets; (iii) SPV partnership items were allocated in accordance with percentage ownership interests; (iv) none of the benefits or burdens associated with owning the Stocks was retained by Fund and (v) none of the benefits

The Treasury Regulations contain examples providing guidance on determining whether a partnership was formed or availed of with a principal tax avoidance purpose in a manner inconsistent with the intent of subchapter K. Those examples distinguish two cases, involving partnerships, in which the parties choose not to make a Section 754 election. On the one hand, in Example 8 of Treasury Regulation Section 1.701-2(d), the use of a partnership as a part of a plan to duplicate the tax benefits of an economic-loss by failing to make a Section 754 election was deemed to violate the Partnership Anti-Abuse Regulations.<sup>28</sup> On the other hand, in Example 9, when

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and burdens associated with owning the Stocks was at any time shifted back from SPV to Fund. With respect to the Purchase: (i) the Purchase provides Investor with an enhanced return on a basket of assets, i.e. the Stocks, that would be more difficult for Investor to purchase separately in the marketplace; (ii) Investor will have substantially more than a nominal interest in SPV, will participate in the profits of SPV, and will not fully divest itself of the upside potential, nor, under some circumstances, fully protect itself from downside risk, with respect to the SPV assets; (iii) SPV partnership items will be allocated in accordance with percentage ownership interests; (iv) none of the benefits or burdens associated with owning the SPV assets will be retained by Fund after the Purchase (except possibly in connection with the Collar; however, the Collar will be a short-term hedge with arm's-length terms); and (v) it is anticipated that none of the benefits or burdens associated with owning the SPV assets will at any time be shifted from SPV to Investor. Cf. Treas. Reg. § 1.701-2(c).

<sup>28</sup> In Example 8, A wished to sell depreciated property (land) to B. A, however, hoped to duplicate the built-in loss in the property. Accordingly, A, C (A's brother) and W (C's wife) formed a partnership to which A contributed the land (fair market value \$60, basis \$100) and C and W each contributed \$30 in cash (which was used to buy investment assets). Profits and losses were shared 50%, 25% and 25% among A, C and W, respectively. The partnership granted B a lease on the land for three years with a purchase option at the maturity of the lease for the land's then fair market value. In the third year, the partnership distributed the investment assets to A in liquidation of his partnership interest. Under § 732(b), A took a \$100 basis in those assets. The partnership did not make a § 754 election. A then sold the assets for their fair market value of \$60 and recognized a \$40 loss. At the end of the third year, B purchased the land for \$60 pursuant to the purchase option.

a low-basis asset was distributed in retirement to one partner, the creation of a timing benefit to the remaining partners (by virtue of their retention of basis in the partnership's remaining assets that would have been reduced had a Section 754 election been in place) was not deemed to violate the Partnership Anti-Abuse Regulations.<sup>29</sup>

The IRS might argue that the Proposed Transaction is more like Example 8 than Example 9. Specifically, the IRS might argue that, as in Example 8, SPV is a newly-formed partnership to which a built-in loss asset was contributed at the time of formation, thereby potentially resulting in loss duplication. Example 9, by contrast, involved an existing partnership to which the partners had contributed cash; the partnership then used that cash to purchase assets which subsequently increased in value.

We believe that, more likely than not, the IRS would not prevail in any such argument. Unlike Example 8, Fund established SPV before Investor had committed to participate in the Proposed Transaction. Moreover, the fact that Fund is a not a U.S. person for U.S. Federal income tax purposes means that, unlike the transaction described in Example 8, the Proposed Transaction will not result in the duplication of a U.S. Federal income tax benefit;<sup>30</sup> rather,

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The partnership, which had received a carryover \$100 basis in the land, recognized a \$40 loss, which loss was shared equally between C and W. Treas. Reg. § 1.701-2(d), Ex. 8.

<sup>29</sup> In Example 9, an investment partnership distributed non-marketable securities (fair market value \$100, basis \$20) in retirement to A, who had been a partner for several years. A's capital account balance and basis in his partnership interest were \$100. Under § 732(b), A took a \$100 basis in the marketable securities. The partnership did not have a § 754 election in place. Since the partnership did not have to reduce the bases of its remaining assets by the \$80 basis increase that attached to the distributed assets, the remaining partners enjoyed a timing benefit with respect to the "excess" \$80 tax basis, a timing benefit that would "turn around" when the partnership ultimately liquidated. Treas. Reg. § 1.701-2(d), Ex. 9.

<sup>30</sup> That is, although Investor would receive a deduction for its allocable share of any loss recognized by SPV upon a Stock Disposition, Fund will not recognize a U.S. Federal income tax loss at the time of the Purchase.

like the transaction described in Example 9, the Proposed Transaction would generally result in a timing benefit.<sup>31</sup>

Most importantly, the critical distinction between the two examples appears to be the reason for the formation of the partnership. In Example 8, the partnership was formed solely to allow the built-in loss with respect to the land to be duplicated, whereas in Example 9, the partnership had been formed some time prior to the transaction for legitimate investment purposes. As in Example 9, Fund will have a legitimate non-tax business purpose for forming SPV, namely to enable it to capture the bid-ask spread created by the issuance of the Covered Warrants, something, absent the formation of SPV, it would have been unable to do. Accordingly, we believe that, more likely than not, the IRS would fail in any attempt to assert that the use of SPV in the Proposed Transaction violates the Partnership Anti-Abuse Regulations.

Clear Reflection of Income. You have asked our opinion as to whether the IRS could successfully apply the "clear reflection of income" doctrine of Section 446 of the Code to deny Investor a deduction for its allocable share of any loss with respect to a Stock Disposition. We are of opinion that, more likely than not, the IRS would not be successful in any attempt to apply that doctrine because SPV will be a bona fide partnership formed for a valid business purpose and any loss recognized by Investor on a Stock Disposition will be the result of an elective provision of

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<sup>31</sup> That is, Investor's basis in its SPV membership interests would be decreased by the amount of the deduction received by Investor for its allocable share of any loss recognized by SPV with respect to a Stock Disposition. As a result, Investor's gain on any ultimate disposition of its SPV membership interests would be increased by such amount.

If Investor retains such SPV membership interests until his death, the basis of Investor's successor in such SPV membership interests would generally be the fair market value of such interests as of the date of Investor's death or at the alternate valuation date (as determined pursuant to § 2032 of the Code) (increased by the successor's share of partnership liabilities, if any, on that date, and reduced to the extent that such value is attributable to items constituting income in respect of a decedent). Treas. Reg. § 1.742-1. However, this would generally also be the case upon the death of any of the remaining partners described in Example 9.

the Code that Congress clearly understood could result in distortions in a taxpayer's taxable income.

Section 446(b) (addressing accounting methods) permits the IRS to deny tax benefits to the taxpayer if such tax benefits do not reflect the economic substance of the transaction.<sup>32</sup> Under these principles, the IRS may attempt to deny a deduction for Investor's allocable share of any loss with respect to a Stock Disposition on the basis that such loss would result in a substantial distortion of income.

However, the fact that Section 754 of the Code is elective reflects the intent of Congress to allow matters of administrative convenience to trump concerns about the lack of clear reflection of income. Indeed, the analysis in Examples 8 and 9 of the Partnership Anti-Abuse Regulations starts from the proposition that a failure to make a Section 754 election may result in distortions between the partners' outside basis in their partnership interests and the partnership's inside basis in its assets. Example 9 states that Congress clearly anticipated such basis distortions, and the electivity of Section 754 establishes Congress's intent, notwithstanding any resultant distortions, to provide an administratively convenient rule. Thus, in the context of Section 754 elections, Congress clearly resolved the tradeoff between more accurate reflection of a taxpayer's income and administrative convenience in favor of the latter, and this resolution should be respected for purposes of Section 446.<sup>33</sup>

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<sup>32</sup> Section 446(b) of the Code permits the IRS, in a case in which no method of accounting has been regularly used by a taxpayer or in which the method of accounting used does not clearly reflect income, to compute a taxpayer's taxable income under such method as does clearly reflect income. See, e.g., *Ford Motor Co. v. Commissioner*, 71 F.3d 209 (6th Cir. 1995), *aff'g* 102 T.C. 87 (1994) (taxpayer may be prevented from deducting an accrued liability that is not required to be paid for a long period of time if, based on an objective time value of money analysis, the deduction is greater than the true economic cost of the obligation).

<sup>33</sup> The Clinton Administration's proposal to make the basis adjustments provided for in §§ 734(b) and 743(b) of the Code mandatory in the case of a distribution of property to, or a transfer of partnership interests by, a partner who has significant built-in loss in partnership property further supports the argument that, more likely than not, a failure to make a § 754 election under such circumstances is

This view is further supported by Treasury Regulation Section 1.701-2(a)(3), which states that, in the case of certain provisions of subchapter K that were adopted to promote certain policy objectives but the application of which might produce tax results that do not clearly reflect income, the proper reflection of income requirement of the Partnership Anti-Abuse Regulations will be treated as satisfied with respect to a transaction that satisfies the bona fide partnership, substantial business purpose and substance over form requirements, so long as the ultimate tax results of the transaction are clearly contemplated by the provision in question.

Therefore, we are of opinion that the IRS would more likely than not fail in any attempt to apply the clear reflection of income doctrine set forth in Section 446 of the Code to deny Investor a deduction with respect to its allocable share of any loss recognized by SPV with respect to a Stock Disposition.

At-Risk Rules. You have asked our opinion as to whether, assuming that the Collar expires unexercised or is unwound, prior to the end of the taxable year in which a Stock Disposition occurs, the IRS would be successful if it were to attempt to deny Investor a deduction for its allocable share of any loss recognized with respect to a Stock Disposition by applying the at-risk rules set forth in Code Section 465 and the Treasury regulations promulgated thereunder (the "At-Risk Rules"). We are of opinion that, more likely than not, the IRS would not be successful in any such attempt.

In general, the At-Risk Rules apply to prevent a taxpayer from deducting losses generated by an activity, except to the extent that the taxpayer is at risk in that activity. The At-Risk Rules apply to all activities engaged in by a taxpayer in carrying on a trade or business or for the production of income.<sup>34</sup> For purposes of those rules, the amount at risk in any one activity is the sum of the amount of money and the adjusted basis of property

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not per se abusive under current law. See Department of Treasury, General Explanations of the Administration's Fiscal Year 2001 Revenue Proposals at 155 (Feb. 2000). The proposal would apply to distributions and transfers made after the date of enactment. See *id.*

<sup>34</sup> I.R.C. § 465(c)(1), (c)(3)(A).



contributed to the activity<sup>35</sup> plus any amounts borrowed for use in the activity where the taxpayer is personally liable for repayment of such amounts or has pledged property other than that used in the activity as security (but only to the extent of the net fair market value of the taxpayer's interest in the property).<sup>36</sup>

In the Proposed Transaction, Investor will be personally liable with respect to the Loan used to finance the Purchase.<sup>37</sup> However, Section 465(b)(3) provides that amounts borrowed generally are not considered to be at risk with respect to an activity if such amounts are borrowed from any person who has an interest (other than as a creditor) in such activity or from a person related to a person (other than the taxpayer) having such an interest. The IRS might argue that Investor is not at risk for the amount of the Loan because the lender, *i.e.*, Fund, has held membership interests in SPV. However, the determination of the extent to which the taxpayer is at risk is made on the basis of the facts existing as of the close of the taxable year.<sup>38</sup> In the case of a pass-through entity, such as SPV, that determination is made as of the end of the entity's taxable year.<sup>39</sup> Since Fund will not have an interest in the capital or net profits of SPV<sup>40</sup> at the end of the taxable year in which the Stock Disposition occurs, Investor would,

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<sup>35</sup> If a taxpayer purchases an interest in an activity (rather than "contributing" to it) the taxpayer is generally considered at risk to the same extent as if it had contributed the purchase price to the activity. Prop. Treas. Reg. § 1.465-22(d).

<sup>36</sup> I.R.C. § 465(b).

<sup>37</sup> If the Loan were recharacterized as an equity interest in SPV because the Purchase will be seller-financed, more likely than not Investor would not be considered at risk with respect to the amount of the Loan until Investor repaid the Loan. I.R.C. § 465(b)(3).

<sup>38</sup> Prop. Treas. Reg. § 1.465-1(a); see also Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1976 at 36 (Dec. 29, 1976).

<sup>39</sup> Prop. Treas. Reg. § 1.465-1(a).

<sup>40</sup> Prop. Treas. Reg. § 1.465-8(b) states that an interest in the activity means a capital interest or an interest in net profits, and that an interest in gross receipts is not sufficient.

more likely than not, be considered at risk with respect to the full amount of the Loan.

If Fund acts as Counterparty or is related to Counterparty (within the meaning of Section 465(b)(3)(C) of the Code),<sup>41</sup> the IRS might alternatively argue that (i) as a result of the Collar, Counterparty has an interest in the Stocks and, hence, in SPV and (ii) because Fund therefore has, or is related to a person that has, an interest in SPV, Investor should not be considered at risk with respect to the amount of the Loan. However, as discussed above, the determination of the extent to which Investor will be at risk will be made on the basis of the facts existing as of the close of the relevant taxable year. Assuming the Collar expires unexercised or is unwound prior to the end of the taxable year in which the Stock Disposition occurs, Counterparty would, more likely than not, not be considered to have an interest SPV at the end of such taxable year. Thus, Investor would, more likely than not, be considered at risk with respect to the full amount of the Loan.

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<sup>41</sup> For these purposes a person (the "related person") is related to any person if (i) the related person bears a relationship to such person specified in § 267(b) or 707(b)(1) of the Code (substituting a 10% ownership test for the 50% ownership test), or (ii) the related person and such person are engaged in trades or business under common control (within the meaning of § 52 of the Code). I.R.C. § 465(b)(3)(C).

Section 465(b)(4) provides that, notwithstanding any other provision of that Section, a taxpayer shall not be considered at risk with respect to amounts protected against loss through nonrecourse financing, guarantees, stop loss agreements or other similar arrangements. The IRS might argue that the put option that is part of the Collar constitutes an arrangement similar to a stop loss agreement and that Investor is therefore not at risk for the amount of the Loan (or, if less, for an amount of the Loan that equals the strike price of such put option).<sup>42</sup> Again, however, the at-risk determination is made at year end. Accordingly, assuming the Collar expires unexercised or is unwound prior to the end of the taxable year in which the Stock Disposition occurs, Investor would, more likely than not, be considered at risk with respect to the full amount of the Loan.<sup>43</sup>

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<sup>42</sup> Cf. R.G. Cooper, 88 T.C. 84 (Jan. 13, 1987) (investors who purchased solar water heating systems were not at risk with respect to recourse notes held by the seller because Investors' retention of put options that allowed them to sell their systems for an amount equal to the outstanding balance on the notes fully protected them from economic risk).

<sup>43</sup> We are assuming that Investor will not enter into another hedge, even during the year following the taxable year in which the Stock Disposition occurs, that would, when taken together with the expiration or unwind of the Collar, be considered a pattern of conduct that has the effect of avoiding the At-Risk Rules within the meaning of Prop. Treas. Reg. § 1.465-4.

For example, increases in the amount at risk occurring toward the close of a taxable year which have the effect of increasing the amount of losses which will be allowed to the taxpayer under section 465 for the taxable year will be examined closely. If, considering all the facts and circumstances, it appears that the event which increases the amount at risk at the close of the taxable year will be accompanied by an event which decreases the amount at risk after the close of the taxable year, these amounts will be disregarded in determining the amount at risk unless the taxpayer can establish [that such increases and decreases were attributable to a valid business purpose and were not a device to avoid section 465].

Prop. Treas. Reg. § 1.465-4.

In such case, the IRS would, more likely than not, fail in any attempt to apply the At-Risk Rules to deny Investor a deduction for its allocable share of any loss recognized with respect to a Stock Disposition.

Passive Loss Rules. You have asked our opinion as to whether the IRS would be successful if it were to attempt to apply the passive loss rules of Code Section 469 and the Treasury Regulations promulgated thereunder (the "Passive Loss Rules")<sup>44</sup> to preclude Investor from deducting its allocable share of any loss recognized with respect to a Stock Disposition from income that Investor earns from other, nonpassive activities. We are of opinion that, more likely than not, the IRS would not be successful in any such attempt because the income earned, or loss incurred, by SPV would, more likely than not, not constitute passive income or loss.

The Passive Loss Rules generally prevent taxpayers, including members of a pass-through entity, from sheltering income from nonpassive activities with losses derived from passive activities.<sup>45</sup> However, "portfolio" income and loss are treated as not derived from a passive activity for this purpose.<sup>46</sup> Portfolio income generally consists of gross income from interest, dividends, annuities and royalties not derived in the ordinary course of a trade or business, reduced by the expenses of earning such income (including properly allocable interest expense), and includes gain or loss not derived in the ordinary course of business upon the disposition of an asset that is of a type producing portfolio income, or that is held for

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<sup>44</sup> Note that the determination of whether a loss is suspended under the At-Risk Rules is made prior to the application of the Passive Loss Rules. Temp. Treas. Reg. § 1.469-2T(d) (6) (i).

<sup>45</sup> Passive activity deductions and credits that are not allowable in the current taxable year can be carried forward indefinitely to offset passive income in a subsequent taxable year. I.R.C. § 469(b).

If a taxpayer disposes of its entire interest in any passive activity in a fully taxable transaction, any losses from that activity that are in excess of any net income or gain from all other passive activities may be used to offset nonpassive income. § 469(g) (1) (A).

<sup>46</sup> I.R.C. § 469(e) (1) (A); Temp. Treas. Reg. § 1.469-2T(c) (3) (i).

investment.<sup>47</sup> Because any loss recognized by SPV on a Stock Disposition would more likely than not be considered a loss attributable to the disposition of an asset of the type that produces portfolio income, *i.e.*, dividends,<sup>48</sup> and assuming that SPV does not hold the Stocks or effect the Stock Disposition in the ordinary course of its trade or business, we believe that, more likely than not, the IRS would fail in any attempt to prevent Investor from using its allocable share of any loss recognized with respect to a Stock Disposition to offset income from other (passive or nonpassive) activities.

U.S. Federal Partnership Tax Statutes and Regulations. You have asked our opinion as to whether, assuming that the Proposed Transaction is otherwise respected for U.S. Federal income tax purposes, SPV would be denied a carryover basis in the Stocks for U.S. Federal income tax purposes as a result of either (i) Fund being deemed to transfer the Stocks to an investment partnership pursuant to Section 721(b) of the Code or (ii) the constructive termination of SPV under Section 708 of the Code on the occurrence of the Purchase. We are of opinion that, more likely than not, SPV would not be denied a carryover basis in the Stocks under those provisions because (i) only gain, not loss, is required to be recognized if property is transferred to an investment partnership and (ii) the constructive termination of SPV will not result in a step down in SPV's basis in the Stocks.

Section 721(a) of the Code provides for the nonrecognition of gain or loss upon the contribution of property to a partnership in exchange for a partnership interest. Under Section 723 of the Code, the partnership's basis in such property is the adjusted basis of such property to the contributing partner at the time of the contribution. Section 721(b) of the Code provides that subsection (a) of Section 721 does not apply to gain realized upon the transfer of property to a partnership that

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<sup>47</sup> I.R.C. § 469(e)(1).

<sup>48</sup> Even though the Stocks are not dividend-paying, the Stock Disposition would, more likely than not, be deemed a disposition of an asset that is of a type producing portfolio income or that is held for investment. *See, e.g.*, Rev. Rul. 93-68, 1993-2 C.B. 72 (even stock in a company which had never paid a dividend was deemed property held for investment within the meaning of §§ 163(d)(5)(A) and 469(e)(1)(A) of the Code because stock generally produces dividend income (which is a type of portfolio income)).

would be treated as an investment company (within the meaning of Section 351(e) of the Code) if the partnership were incorporated. Correspondingly, Section 723 of the Code provides that the basis of property contributed to a partnership by a partner shall be increased by the amount of gain (if any) recognized under Section 721(b) by the contributing partner at the time of the contribution. We believe that, more likely than not, Section 721(b) of the Code will not operate to deny SPV a carryover basis in the Stocks contributed by Fund because, even if the transfer of the Stocks by Fund to SPV constituted a transfer to an investment partnership (within the meaning of Section 351(e)), Section 721(b) requires recognition only of gain, not loss.

We further believe that, more likely than not, the constructive termination of SPV caused by the Purchase will not result in a step down in the basis of the SPV assets. Section 708(b) of the Code provides that a termination of a partnership will occur if within a twelve month period there has been a sale or exchange of 50 percent or more of the total interest in the partnership capital and profits. In the Proposed Transaction, 100 percent of the interest in SPV capital and profits will be transferred within a twelve month period, 0.1 percent to the Related Purchaser and 99.9 percent to Investor. In such case, Treasury Regulation Section 1.708-1(b)(iv) provides that the following transactions will be deemed to occur: (i) SPV will be deemed to contribute all its assets and liabilities to a new partnership ("new SPV") in exchange for interests in new SPV; and (ii) SPV will be deemed, immediately thereafter, to distribute interests in new SPV to Investor and the Related Purchaser, in proportion to their interests in SPV, in liquidation of SPV. Thus, new SPV will have the same tax basis in the Stocks as "old" SPV did.<sup>49</sup> Accordingly, we believe that, more likely than not, the constructive termination under Section 708(b) of the Code of SPV at the

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<sup>49</sup> Treas. Reg. § 1.708-1(b)(1)(iv), Ex.; I.R.C. § 723. Only if a partnership terminated under Section 708(b) has a Section 754 election in effect for the taxable year in which the termination occurs will the bases of the partnership assets be adjusted pursuant to Sections 743 and 755 prior to their deemed contribution to the "new" partnership. Treas. Reg. § 1.708-1(b)(1)(v).

time of the Purchase will not result in a step down in the basis of the assets held by SPV.

Very truly yours,

*Carl Sued Moore*

Robert W. Johnson, IV  
c/o Joel Latman  
Johnson Company, Inc.  
630 Fifth Avenue, Suite 1510  
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Woodglen I LLC  
Woodglen I, Inc.  
c/o Robert W. Johnson, IV  
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FEDERAL INCOME TAX OPINION TO  
TITANIUM TRADING PARTNERS LLC

Permanent Subcommittee on Investigations

**EXHIBIT #63a**

**KS-00001092**





BRYAN CAVE ROBINSON SILVERMAN

**PRIVILEGED AND CONFIDENTIAL  
ATTORNEY WORK PRODUCT**

October 14, 2002

Titanium Trading Partners LLC  
Attention: Mr. Haim Saban  
c/o Saban Capital Group, Inc.  
10100 Santa Monica Boulevard  
Los Angeles, CA 90067

Re: U.S. Federal Income Tax Opinion for Titanium Trading Partners LLC

Dear Mr. Saban:

You have requested our opinion, in your capacity as President of Titanium Acquisition Corporation ("TAC"), which is the managing member of Titanium Trading Partners LLC ("TTP"), regarding whether TTP, as described more fully below, will recognize for United States ("U.S.") Federal income tax purposes losses realized from: (i) the sale of certain shares of stock (the "Portfolio"), and (ii) the disposition of certain put options and call options (the "Collar") held by TTP (the losses realized from the sale of the Portfolio and the disposition of the Collar are sometimes collectively referred to herein as the "TTP Losses") (the sale of the Portfolio and disposition of the Collar, together the "Transaction"). All, or a portion, of such losses with respect to the Portfolio were inherent in the Portfolio when a 99% and a 1% membership interest of TTP was purchased by TAC from Barnville Limited ("Barnville"), an Isle of Man company, and by Cheryl Saban ("CS") from European American Investment Corporate Services Limited ("Euram"), a corporation organized in the United Kingdom, respectively. TAC is not related to Barnville and CS is not related to Euram.

Based upon our understanding of the facts and assumptions of the Transaction as described herein, it is our opinion that it is more likely than not that the conclusions set forth in the "Opinions" discussion would be upheld by a court if they were challenged by the Internal Revenue Service (the "Service") and fully litigated on the merits. Any conclusion set forth in this letter that an issue "should," "would," "will" or "likely" be resolved in a particular manner means only that it is our opinion it is more likely than not that a court would sustain that conclusion.

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and Bryan Cave,  
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### FACTS

Based on discussions with Haim Saban ("HS"), Matthew G. Krane, Esquire ("MK"), and Chuck Wilk ("CW") of Quellos Custom Strategies, LLC ("Quellos"), a financial advisory firm, and additional representations submitted to us from HS, MK, and CW, and other parties we understand the relevant facts preceding and involving the Transaction to be as follows:

In 1986, HS owned all of the stock of Saban Productions, Inc. ("SPI"), a California corporation. SPI was in the business of producing background musical themes and cues, as well as songs, for animated television shows. At the end of 1986, the music publishing division of Warner Brothers was eager to acquire libraries such as SPI's, and thus, in late 1986, SPI sold all of its music copyrights to Warner Brothers. Thereafter, SPI dissolved and liquidated distributing to HS the proceeds from the sale and all of its remaining assets, including its music production contracts with the animation studios.

After SPI's liquidation, HS continued the music production business as a sole proprietorship doing business under the name of Saban Productions ("SP"). In 1988, SP made a second sale to Warner Brothers of its music library, including all of the music SP created for a specified number of television shows to be produced in the future. In 1989, T.V. Investment International B.V. ("TVI"), a Netherlands corporation and wholly owned subsidiary of the Luxembourg-based Compagnie Luxembourgeoise de Télédiffusion, S.A. ("CLT") (one of the largest over-the-air broadcasters in Europe) and HS formed Saban Entertainment, Inc. ("SEI"), a Delaware corporation.

In December 1992, HS and CS (CS was then and is currently the spouse of HS) jointly formed [REDACTED] California limited partnership, with HS as the general partner and CS as the limited partner. HS and CS each contributed to [REDACTED] 139.38 shares of SEI stock.<sup>17</sup>

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DESCRIPTION OF PARTNERSHIP MEMBERS

<sup>17</sup> HS previously had sold CS 139.38 shares of SEI stock.

<sup>21</sup> [REDACTED]

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\_\_\_\_\_ and \_\_\_\_\_ formed Silverlight Enterprises, L.P. ("Silverlight"), a California limited partnership, with \_\_\_\_\_ as the general partner and \_\_\_\_\_ as the limited partner. We understand that Silverlight was formed for the purpose of making investments primarily in equity and debt instruments. Under the Limited Partnership Agreement of Silverlight, dated December 22, 1992:

- a) \_\_\_\_\_ contributed to Silverlight its 278.76 shares of SEI stock and cash in exchange for a 97% Class A interest and a 97% Class B interest in the partnership, respectively.
- b) \_\_\_\_\_ contributed cash to Silverlight in exchange for a 3% Class A interest and a 3% Class B interest in the partnership.
- c) The holders of the Class A interests were entitled to an annual guaranteed payment of 10% of the capital contributed by them for their Class A interests (the "Guaranteed Payment").

\_\_\_\_\_ purchased from \_\_\_\_\_ one-half of \_\_\_\_\_ Class A interest in Silverlight, and became a limited partner in Silverlight. \_\_\_\_\_ and \_\_\_\_\_ then entered into an Amended and Restated Limited Partnership Agreement of Silverlight, dated December 29, 1992, reflecting \_\_\_\_\_ entry into Silverlight as a new limited partner. On February 5, 1993, \_\_\_\_\_ purchased the remainder of \_\_\_\_\_ Class A interest in Silverlight, and the parties entered into a Second Amended and Restated Limited Partnership Agreement of Silverlight, dated February 5, 1993, reflecting the resulting change in ownership.

In March 1995, SEI purchased all of TVI's SEI shares for \$40,000,000, and HS then decided to separate the music production business from SEI's other businesses. HS thus entered into a Music Services Agreement with SEI. At the beginning of 1996, HS assigned the Music Services Agreement to \_\_\_\_\_, a California corporation wholly owned by HS. \_\_\_\_\_ elected to be an S corporation beginning January 1, 1996.<sup>37</sup> The income of the music production business has seen steady growth since 1996.

By the middle of 1995, HS was convinced that the key to fully realizing the potential value of SEI's "content" assets, including *Power Rangers*, was the control of a source

<sup>37</sup> Internal Revenue Code section 1361(a) defines the term S corporation, generally, as a "small business corporation" for which an election under section 1362(a) is in effect for such year. A small business corporation, in turn, is defined as a domestic corporation, which is not an ineligible corporation, and which does not have more than 75 shareholders, shareholders who are not individuals (except generally for certain defined estates, trusts, and charitable organizations), nonresident alien shareholders, and more than one class of stock. Code section 1362(a) provides how a small business corporation may elect to be treated as an S corporation for Federal income tax purposes. Unless otherwise noted, all "section" references are to the Internal Revenue Code of 1986, as amended and in effect (the "Code"), and all "Regulations" and "Treas. Reg." references are to the Treasury Department's regulations promulgated under the Code.

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of widespread television distribution in the U.S. To that end, HS began discussions with Fox Broadcasting Company ("FBC" or "Fox"), the owner the Fox Children's Network and the Fox television network, to find a way to "marry" SEI's content with FBC. After exploring numerous proposed structures and arrangements, in December 1995, FBC, SEI and HS entered into a series of agreements, collectively referred to as the "Strategic Alliance." As part of the Strategic Alliance, SEI, HS, the shareholders of SEI which included Silverlight, and FBC entered into a Strategic Stockholders Agreement (the "SSA") dated December 22, 1995, the terms of which included:

1. SEI's shareholders were subject to certain restrictions on transferring their SEI stock.
2. No SEI stock could be voluntarily subjected to any lien (hereinafter referred to as the "No-Lien Clause").
3. HS was granted the right (the "Put Option") on the occurrence of certain events ("Put Triggering Events") to require FBC to purchase all of his and the other SEI shareholders' SEI stock.
4. The Put Triggering Events were (i) HS' death, (ii) a change in control of FBC, (iii) any time after seven years but prior to seventeen years from the date of the SSA, and (iv) the fifth anniversary of the SSA, *i.e.*, December 22, 2000.
5. In order to exercise the Put Option with respect to the fifth anniversary of the SSA, HS had to give notice to FBC no later than 180 days prior to that anniversary, or June 25, 2000.

Under a Stock Ownership Agreement ("SOA") executed as part of the Strategic Alliance, generally, HS and the SEI shareholders granted Fox Kids Worldwide L.L.C. ("FKLLC"), a Delaware limited liability company,<sup>47</sup> the right (the "Call Option") upon the occurrence of certain events ("Call Triggering Events") to purchase all of the SEI stock of HS and the other shareholders (including Silverlight). The Call Triggering Events for the exercise of the Call Option were (i) the death of HS, (ii) any time after seven years and prior to seventeen years from the date of the SOA, and (iii) the exercise by HS of the Put Option. In the event both the Put Option and Call Option were exercised, the SSA provided that the Call Option would in all cases be effective in lieu of the Put Option.

<sup>47</sup> Under the Strategic Alliance, FKLLC's "Class B Members" were SEI and FCN Holding Company ("FCNH"), and its "Class A Member" was FBC.

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The SSA required the parties to use reasonable efforts to reach agreement on the fair market value of the entities to be valued.<sup>57</sup> If the parties could not agree on the Fair Market Value, the SSA provided for an appraisal/arbitration mechanism for the conclusive determination of Fair Market Value (the "Appraisal Mechanism").

In 1997, several restructuring transactions took place. The Call Option was distributed by FKLLC to FCNH. In a tax-free exchange<sup>60</sup> transaction, HS and the other shareholders of SEI exchanged their SEI stock for 49.5% of the common stock of Fox Kids Worldwide, Inc. ("FKWW"), a Delaware corporation formed to be the holding company of the Strategic Alliance businesses, and Fox Broadcasting Sub, Inc. ("FBSI"), the 98% parent of FCNH, contributed its FCNH stock for 49.5% of the common stock of FKWW, and Allen & Company exchanged its 2% of the FCNH stock for the remaining 1% of the common stock of FKWW. FKWW issued debt to FBC in complete liquidation of FBC's interest in FKLLC. HS, the other shareholders of SEI, FBSI, FBC, and Allen & Company entered into a Restated and Amended Strategic Stockholders Agreement dated August 1, 1997, (the "Amended SSA") amending and restating the SSA to reflect the reorganization. The Amended SSA contained restrictions on the transfer of the parties' FKWW stock similar to those contained in the SSA with respect to the SEI stock. The Amended SSA also retained the No-Lien Clause with respect to the FKWW stock. HS' Put Option was made applicable to the FKWW stock, and the definition of Fair Market Value in the SSA was carried over *verbatim* to the Amended SSA, as was the Appraisal Mechanism. Some time later, FKWW changed its name to Fox Family Worldwide, Inc. and is hereinafter referred to as "FFWW."

In 2001 (the taxable year for which we have been asked to render U.S. Federal income tax opinions to TTP), Silverlight held stock in FFWW as well as a portfolio of publicly traded securities and noncontrolling interests in several partnerships. HS held a significant limited partnership interest in Silverlight; HS also was the sole shareholder of 5161, the general partner of Silverlight [REDACTED]. CS also had a limited partnership interest in Silverlight. HS, CS and [REDACTED] personally held stock in FFWW which accounted for a significant percentage of HS' and CS' individual net worths. (HS, CS, [REDACTED] and Silverlight are referred to collectively hereinafter as the "Saban Shareholders.")

Toward the end of 1999, it had become clear to HS that the overall business objectives of FBC and FBC's parent, News Corp. ("News"), were inconsistent with the steps that he felt were necessary to achieve the level of growth in FFWW that would justify holding such a

<sup>57</sup> "Fair Market Value" was defined in the SSA to mean the value determined "on the basis of the businesses, properties, historical financial performance and financial condition, projections and prospects for the further growth of the entity or entities whose Fair Market Value is being determined."

<sup>60</sup> The transaction was executed pursuant to section 351.

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large portion of his and CS' net worth in FFWW stock. This was manifested both in actions taken by News in pursuit of its other businesses that impacted or had the potential to impact businesses of FFWW in a negative way and in the exercise by Fox of the governance powers granted to it in the Amended SSA to block FFWW from taking actions HS thought were needed to achieve the requisite growth of FFWW's businesses.

Consequently, HS commenced efforts to negotiate a restructuring of his relationship with Fox that would alleviate these problems. HS soon realized, however, that he would have to also focus on finding ways to monetize at least a portion of the FFWW stock held by the Saban Shareholders in the event he was unable to achieve a satisfactory resolution with Fox in a reasonable amount of time. HS believed monetization of the FFWW stock would yield two benefits. First, it would provide a way to diversify his holdings, and second, it would allow him to capitalize on investment opportunities he judged to have greater current return potential than the FFWW stock.

To HS the most obvious method of monetizing the FFWW stock was to exercise the Put Option. Several reasons, however, militated against this.

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#### DISCUSSION OF FACTORS MITIGATING AGAINST EXERCISE OF PUT OPTION

<sup>77</sup> The only fixed period imposed by the Appraisal Mechanism was the 30-day period that both sides' investment bankers had from the submission of their valuation reports to appoint a third banker.

<sup>78</sup> Although the Amended SSA provided for the payment of the interest at the prime rate to the Saban Shareholders on the purchase price for their stock from the valuation date to the date of the payment, this did not satisfy either of HS' monetization objectives. Accruing interest provided neither the diversification of HS' and CS' holdings nor their ability to capitalize on investment opportunities (HS did not regard the earning of interest at the prime rate as an investment "opportunity").

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### DISCUSSION OF FACTORS MITIGATING AGAINST EXERCISE OF PUT OPTION

Consequently, throughout 2000 HS continued to discuss with Fox various ways to restructure their arrangement. He also began to investigate other monetization possibilities with various financial consultants and institutions. HS found that financial institutions were generally open to monetizing his FFWW stock by making a full-recourse loan to him secured by a pledge of his FFWW stock.

Alternatively, a pledge of the FFWW stock was impossible because of the No-Lien Clause. Just as great an obstacle, however, would be a fully recourse loan against HS.

If anything, HS sought to reduce his personal exposure from borrowed funds, not increase it.

In response to this, HS was advised that he might be able to borrow money on either a non-recourse or limited-recourse basis by pledging the property purchased with the borrowed funds. The amount of loan that any lender would make if HS wished to purchase securities, would be no more than 50% if the securities purchased constituted "margin stock" (e.g., publicly traded stock).<sup>97</sup>

As the December 31, 2000, deadline for giving notice of exercise of the Put Option approached, HS believed he had exhausted, without success, every avenue to resolve the situation with Fox. Therefore, by letter dated December 21, 2000, HS exercised the Put Option. Consequently, by letter dated January 17, 2001, Fox exercised the Call Option which then took precedence over the Put Option (the reciprocal exercise of the Put Option and Call Option hereinafter referred to as the "Fox Option Exercise").

During this time period, the stock market, and in particular the technology sector, suffered a serious decline.<sup>100</sup> Up to that point, HS and Silverlight had minimal exposure to the technology sector, having persistently avoided it as overpriced, "overhyped," and excessively volatile. As the decline continued at the beginning of 2001, however, HS believed that the sector presented genuine buying opportunities. Importantly, though, because of the volatility of

<sup>97</sup> The Federal Reserve Board Regulation U limits the amount a bank could lend for the purpose of purchasing margin stock.

<sup>100</sup> We note that the NASDAQ closed at a high in March of 2000 at 5,132.52, and by the winter of 2001, it closed consistently below 2,000.

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technology stocks, HS had no interest in holding a portfolio of such stocks for any length of time; on the contrary, HS believed that the current stock market decline coupled with the volatility presented a prudent opportunity to make a short-term profit in this sector.

After the Fox Option Exercise, News commenced to undertake a due diligence review of FFWW, presumably for the purpose of preparing for the negotiations to determine the purchase price for the Saban Shareholder's FFWW shares. After FFWW supplied all of the documents and information requested by News, several months passed with little communication between the parties. There was virtually no progress toward a determination of the purchase price for the Saban Shareholders' FFWW stock.

[REDACTED]

For these reasons, HS intensified his efforts to find a monetization mechanism for his FFWW stock. In January 2001, MK met with CW of Quellos and explained the situation to him. In a follow-up meeting a few weeks later, CW told MK that he believed Quellos could devise a monetization plan and asked MK to furnish him with details of HS' assets and affiliated entities.

More importantly, though, CW explained that Quellos' approach to the problem was somewhat the opposite from that of other institutions. Instead of focusing on the availability and terms of a monetization financing, Quellos believed it should first identify the investment vehicle that suited HS' objectives for the use of the monetization proceeds and then determine whether and how such an investment could be financed. Thus, CW focused in on HS' interest in a short-term investment in the technology sector, e.g., how much money HS wanted to invest, the length of time HS was looking to hold such an investment, and the level of risk HS was willing to bear.

In the Spring of 2001, CW informed MK that he thought he had identified an investment that met HS' goals for the use of the monetization proceeds in a short-term trade capitalizing on the then current price levels of technology stocks.

Barnville held substantial positions in several technology stocks. Barnville and Euram, a financial advisory firm based in London, had formed TTP, a Delaware limited liability company, to which it was intended that Barnville would contribute a portion of its technology stocks (referred to herein as the "Portfolio") in exchange for 99% of TTP's membership interests. Barnville and Euram formed TTP as a partnership for purposes of obtaining a profit from the sale of interests in TTP. Euram, which held the remaining 1% of TTP and was its managing member, also arranged for the placement by TTP of a long-dated (five-year) covered call contract on the Portfolio.

CW believed HS should consider purchasing all of Barnville's interest in TTP in order to acquire a diversified basket of technology stocks. MK agreed that CW should enter into

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preliminary discussions with Eram and Barnville regarding the purchase by HS of all of Barnville's membership interest in TTP, and that CW should also explore possible sources for financing the purchase.

After several conversations between CW and HSBC Bank in New York ("HSBC"), a subsidiary of HSBC in London and Hong Kong, CW told MK that he and HSBC had possibly found a way for HSBC to finance HS' purchase of Barnville's interest in TTP without violating the No-Lien Clause and without requiring unlimited recourse against HS. HSBC was willing to make a loan to facilitate the purchase of Barnville's interest in TTP. It would not, however, under any circumstances make the loan on anything other than a full-recourse basis, but, because Silverlight owned approximately 25% of the outstanding common stock of FFWW, it was willing to make a full-recourse secured loan to Silverlight, with only a limited and contingent guaranty by HS (see detailed explanation below at footnote 19) so that Silverlight could purchase the interest of Barnville in TTP. Moreover, HSBC would not require a pledge of Silverlight's (or any other) FFWW stock.<sup>11/</sup>

HSBC, however, required additional security arrangements to make the loan to Silverlight. HSBC wanted Silverlight, immediately after the purchase of Barnville's interest, to cause TTP to purchase an at-the-money put on the Portfolio to limit TTP's risk of a decline in the Portfolio's value while the loan was outstanding. TTP could partially finance the put by simultaneously selling a call on the Portfolio with the same expiration date as the put but at a higher strike price, thereby creating a "collar" (referred to herein as the "Collar"). (HS favored the idea of the Collar because it brought the overall risk of the transaction down while still retaining potential for significant short-term return on the investment.)

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**DISCUSSION OF ISSUES AND OBLIGATIONS  
 OF SILVERLIGHT PARTNERS**

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<sup>11/</sup> For the HSBC proposal to give HS a genuine shield from personal liability from the loan to Silverlight, the Glass Wave/Silverlight partnership structure in place at that time would have to be altered. HS, as the general partner of Glass Wave, which was in turn the general partner of Silverlight, had unlimited personal liability for Silverlight's debts. It was thus necessary to replace Glass Wave as the general partner of Silverlight with an entity, such as a corporation or limited liability company, that afforded its owners limited liability from the claims of the entity's creditors. HS would thereby be shielded from unlimited personal liability for future claims, including those arising from the HSBC loan, that might be asserted against Silverlight.

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**DISCUSSION OF ISSUES AND OBLIGATIONS  
OF SILVERLIGHT PARTNERS**

In May 2001, Fox decided to seek a third party purchaser for FFWW rather than purchase the shares of the Saban Shareholders. This triggered an entirely new set of issues between HS and Fox to be negotiated and resolved, such as HS' involvement in the selling process, the freedom, if any, of the Saban Shareholders not to sell in a transaction approved by

<sup>12</sup> The issue of HS' personal liability for Silverlight's debts in his capacity as general partner of [REDACTED] had been fully discussed by the parties when Silverlight and [REDACTED] were formed in 1992. The Guaranteed Payment and the deficit make-up provision were material conditions of the [REDACTED] which were the partners of [REDACTED] and the [REDACTED] which were the partners of [REDACTED] entering into the Silverlight limited partnership agreement. The Trustees opposed the use of a limited liability entity as the general partner of [REDACTED] at that time for the reasons stated in the text. Accordingly, HS agreed to personally act as the general partner of [REDACTED] thereby making his personal assets available to fund the Guaranteed Payment and to restore a capital account deficit of the general partner.

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Fox, and compensation to be paid by Fox to the Saban Shareholders for Fox's retention of the Fox Children's Network.

As a result, a monetization of the Saban Shareholders' FFWW stock became even more important to HS, because as it became increasingly clear that no attention or energy on the part of Fox would be given to the Appraisal Mechanism during the period agreed to by the parties for the solicitation of buyers. If no buyers emerged during that period, the Appraisal Mechanism would be reinstated, with the end result that Fox would be no closer to effectuating the purchase of the Saban Shareholders' FFWW shares and at least another year would have elapsed.

In July 2001, while HS and Rupert Murdoch, the chairman and C.E.O. of News ("Murdoch"), attended an industry conference held annually with media principals and investment bankers. Michael Eisner ("Eisner"), the chairman and C.E.O. of The Walt Disney Company ("Disney"), agreed to meet with HS and Murdoch to discuss Disney's possible acquisition of all of FFWW. At the conclusion of that meeting, Eisner acting on behalf of Disney made an offer to purchase all of the outstanding common stock of FFWW and certain promissory notes (the "Fox Notes") held by a Fox affiliate for a certain amount of cash.

On July 23, 2001, the parties executed a purchase agreement by and among the Saban Shareholders, Fox, certain of their affiliates, Allen & Company and Disney, relating to the sale of the common stock of FFWW and the Fox Notes to Disney (the "Disney Agreement"). Pursuant to the Disney Agreement, the closing of the sale was scheduled to occur three business days following the later to occur of (i) the expiration or termination of the applicable waiting periods under the Hart-Scott Rodino Act and foreign antitrust laws and (ii) the satisfaction or waiver of all other conditions set forth in Articles 11 and 12 (Conditions Precedent to the Obligation of the Buyer to Close and Conditions Precedent to the Obligation of the Sellers to Close, respectively) of the Disney Agreement.

After the execution of the Disney Agreement numerous matters remained to be worked out among the parties in order to close the transaction. In addition to the various conditions to closing that were imposed under the Disney Agreement, several significant provisions had been left to be resolved through good faith negotiations among the parties. Notwithstanding HS' efforts, there were significant regulatory approvals, both domestic and foreign, which were required to be obtained in order to consummate the sale and the timing for the granting of such approvals was beyond HS' knowledge and control. Thus, HS' liquidity and ability to diversify his investments continued to be illusory.<sup>13/</sup>

<sup>13/</sup> After the events of September 11, 2001, the consummation of the sale of the FFWW stock to Disney became very uncertain.

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DISCUSSION OF FACTORS RESULTING  
IN REVISION OF INITIAL PLAN ON  
STRUCTURING THE POINT TRANSACTION

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**DISCUSSION OF FACTORS RESULTING  
 IN REVISION OF INITIAL PLAN ON  
 STRUCTURING THE POINT TRANSACTION**

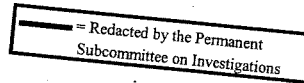
Consequently, to avoid any potential personal exposure to HS and CS for the HSBC loan, CW suggested that the interest in TTP not be acquired directly by Silverlight, but rather by a new entity wholly owned by Silverlight. Silverlight would contribute the loan proceeds to this entity ("Newco"), which would in turn acquire the interest in TTP. Newco could then pledge its interest in TTP as collateral for the loan. Silverlight could then distribute the interest in Newco (rather than the interest in TTP) to HS and CS in complete redemption of their limited partnership interests in Silverlight. HS and CS would, therefore, acquire the interest in Newco free and clear of any direct encumbrances, and with the reduced risk of liability exposure.

CW pointed out two additional benefits of having a wholly owned entity of Silverlight, rather than Silverlight itself, acquire the TTP interest from Barnville. First, it would prevent Silverlight from incurring any liabilities arising out of the purchase of the TTP interest, including liabilities imposed under the purchase agreement entered into with Barnville. Second, it would allay any fears that Silverlight could be held liable for the obligations incurred by TTP prior to the purchase of Barnville's interest in TTP. CW advised HS and MK that although a member of a limited liability company theoretically had no exposure to the debts of the entity, limited liability company statutes were only recently enacted in the U.S. and, as a result, few if any of the contours of the limited liability protection set forth in the various legislative enactments had been delineated by U.S. courts.

HS and MK therefore agreed that Barnville's interest in TTP should be acquired by a new wholly owned entity of Silverlight to which Silverlight would contribute the HSBC loan proceeds. Silverlight would not pledge the interest in the new entity as collateral for the HSBC loan, which would enable Silverlight to distribute the interest to HS and CS in complete redemption of their interests in Silverlight, free and clear of all direct encumbrances. For the reasons stated above regarding the lack of settled law determining the reach of the liability protection provisions in limited liability company laws, both HS and MK thought that the new entity should not take the form of a limited liability company but instead be formed as a corporation. HS was especially adamant in this regard, because he was almost entirely unfamiliar with the limited liability company form of entity, having rarely utilized one to carry on any of his own business enterprises.<sup>16</sup> After CW received confirmation from HSBC that it

<sup>16</sup> HS had always operated his businesses in the U.S. through corporations, beginning with SPI in 1983, and sole proprietorships. The one exception might be FKLLC, although it was jointly owned with Fox entities.

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agreed in principle to make the loan to Silverlight in accordance with the outlines of Quellos' plan, HS, working with CW, commenced to effectuate the structure to accomplish his goals and objectives.

To this end, on August 17, 2001, Silverlight formed TAC as a corporation under the Delaware Corporation Law. Approximately a month later, Silverlight borrowed \$800 million from HSBC and executed a Credit Agreement dated September 21, 2001 (the "Credit Agreement") which set forth the terms and conditions applicable to the loan (the "Loan"). The Loan was fully recourse to Silverlight. Further, Silverlight did not have any set off rights against HSBC relating to other transactions entered into with HSBC by affiliates of Silverlight. Under California law, [REDACTED] as the general partner of Silverlight, was liable for the debts of the partnership. The limited partners of Silverlight had no liability for the Loan in excess of the amounts they had already contributed to Silverlight.<sup>17/</sup> Further, [REDACTED] executed separate reimbursement and indemnity agreements effective as of September 21, 2001, with each limited partner of Silverlight agreeing thereunder to reimburse such partner for any payments made under the limited and/or contingent guarantee and indemnify it against any loss incurred by it arising out of the Loan (collectively the "Indemnity Agreements").<sup>18/</sup> HS believed that the value of Silverlight's assets plus the value of [REDACTED] assets were sufficient to satisfy Silverlight's obligations.

Although Silverlight was the sole borrower, its partners and affiliates provided limited and/or contingent guarantees to HSBC.<sup>19/</sup> Further, [REDACTED] and TAC each executed an

<sup>17/</sup> The Silverlight partnership agreement required the general partner, i.e., 5161, to restore to Silverlight any deficit in 5161's capital account upon the liquidation of Silverlight. The Silverlight partnership agreement, however, did not require a limited partner to restore to the partnership upon its liquidation any negative balance in such limited partner's capital account. Further, under state law, if HS, CS, [REDACTED] the other limited partners had ever been required to make a payment to HSBC under their limited and/or contingent guarantees (see discussion of same below), as the case may be, such limited partner would have been subrogated to HSBC's right to recover in full from the partnership.

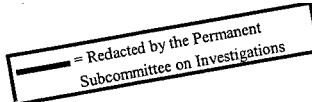
<sup>18/</sup> The Indemnity Agreements provided, in pertinent part, that each of the limited partners of Silverlight was entitled to be reimbursed by [REDACTED] for any payments made by such limited partner pursuant to the limited guarantee and/or contingent guarantee and to be indemnified against any loss incurred arising out of the Loan.

<sup>19/</sup>

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#### DETAILS OF PLEDGES OF COLLATERAL REQUIRED FOR HSBC LOAN

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unlimited guaranty in favor of HSBC and pledged collateral in support thereof. The collateral of [REDACTED] consisted of the value of its general partnership interests in Silverlight, all copyrights and copyright registrations, license and royalty agreement (except where the assignment would be prohibited) and all books, records, and writings relating to the foregoing. The collateral of TAC consisted of deposit accounts at HSBC, the Custody Account Agreement between TAC and HSBC, an HSBC securities account and all property held therein, all books, records, and writings relating to the foregoing. In addition, TAC's collateral was supplemented after it purchased Barnville's interest in TTP on September 24, 2001, to include the Certificated Securities (including the certificate representing the 99% interest in TTP), and the Purchase Agreement dated September 24, 2001, between TAC and Barnville.

On September 24, 2001, Silverlight transferred the \$800 million from its HSBC account to TAC's HSBC account. Silverlight transferred this amount to TAC, in part, as a capital contribution to TAC and in part for the acquisition of a debenture issued by TAC. The principal amount of the debenture was \$67,827,867, having a term of twenty years with interest payable quarterly of at least 5.5% per annum (the "Debenture"). No interest was permitted to be paid by TAC until the first quarterly date following when the Loan was paid off.<sup>20/</sup> On September 24, 2001, TAC purchased Barnville's 99% membership interest in TTP for \$768,784,235. At this time, TTP held the Portfolio which was comprised of shares in several technology companies, including Automatic Data Processing, Biogen Inc., Dell Computer, Nokia Computer, Qualcomm Inc. — all of which were of interest to HS. Barnville had contributed the Portfolio and Euram had contributed its services to TTP with the intention of making a profit. Barnville and Euram expected to obtain a profit over the current market value of the Portfolio by forming TTP with the Portfolio and selling interests in TTP. TAC's purchase was at arm's length and the entire purchase price was paid in cash. On the same day, CS purchased Euram's 1% membership interest in TTP for \$7,765,497 in cash.<sup>21/</sup> Consequently, TTP, which had not elected to be treated as a corporation but rather as a partnership (when relevant) for U.S. Federal income tax purposes, experienced a technical termination because there was an exchange of 50% or more of the total interest in its capital and profits. TTP,

<sup>20/</sup> The Debenture provided, that generally the Holder could make a written demand not later than October 1, 2003, for TAC to pay the Holder a mandatory prepayment on December 1, 2003, in the amount of \$20,000,000. TAC also had the right generally after written notice to the Holder, to optionally prepay all or any part of the unpaid principal balance of the Debenture without penalty or premium. All prepayments whether mandatory or optional were required to be accompanied by accrued interest on the principal amount being repaid to the date of such prepayment. The Debenture also provided that it was only transferable on the Debenture register of TAC.

<sup>21/</sup> Also on September 24, 2001, TAC and CS each made a pro rata contribution to TTP in proportion to their respective membership interests in the amounts of \$31,208,373 and \$315,236, respectively. These amounts were used by TTP to purchase the Collar. See discussion below.

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therefore, adopted the taxable year of TAC, its member having an aggregate interest in profits and capital of more than 50%. TTP's taxable year became, therefore, the fiscal year ending September 30, 2001.<sup>22/</sup>

At the time of the purchase, the fair market value of the Portfolio was significantly lower than Barnville's original purchase price of the Portfolio. Based upon the books and records of TTP supplied to us and verified by Quellos as accurate, Barnville's original purchase price of the Portfolio was \$1,480,941,293.<sup>23/</sup> TTP did not have a section 754 election in effect when TAC acquired Barnville's 99% membership interest. Thus, no adjustment was made to the basis of any of the assets held by TTP by reason of the purchase of the TTP interests by TAC and CS.

Contemporaneously with the purchase of Barnville's membership interest in TTP by TAC, TTP had entered into an ISDA Master Agreement with HSBC. After the purchase of Barnville's interest in TTP by TAC, TTP entered into ten identical transactions (except with respect to the expiration dates)<sup>24/</sup> which were European options each comprised of a put and call option (collectively, the "Puts" and the "Calls," respectively) on the shares of stock making up the Portfolio, each with a strike price of \$76,886,112.13 and \$83,037,001.10, respectively (i.e., the Collar). TTP acquired the Collar to hedge its risk of holding the Portfolio (and the Collar was also a prerequisite of HSBC making the Loan to Silverlight) while retaining some of the upside potential of its investment. TTP was interested in retaining as much profit potential from its equity investments while protecting itself from further erosion of this investment. The Collar entered into with HSBC afforded TTP this opportunity. TTP's net cost of the Collar was \$31,523,305.90.

TTP held the Portfolio and Collar solely for investment purposes (the "TTP Activity"). Further, we understand that TTP's ownership of the Portfolio and its participation in the Collar did not constitute a trade or business.

<sup>22/</sup> TAC had previously adopted the fiscal year ending September 30, 2001, as its taxable year. TAC filed Form 7004 on or before December 15, 2001, extending the due date of its tax return for its first taxable year ending September 30, 2001. TAC's U.S. Federal income tax return for its first year ending September 30, 2001, was filed timely in June 2002. An amended return for TAC's first taxable year ending September 30, 2001, to correct an error on Schedule L, "Balance Sheets Per Books," will be filed on or before October 15, 2002.

For its fiscal year beginning October 1, 2001, TAC elected S corporation status (see footnote 3 above for explanation of S corporations generally) which required TAC to adopt the calendar year as its taxable year. See TAC's Form 2553, "Election by a Small Business corporation." See Notice of Acceptance as an S corporation dated January 28, 2002, to TAC from the Internal Revenue Service. Since TAC was TTP's majority member, TTP was also required to adopt the calendar year for its taxable year.

<sup>23/</sup> See Exhibit A attached hereto. We note that we have not been asked, nor have we independently undertaken ourselves, to verify the accurateness of this number, but have relied solely on the information supplied to us.

<sup>24/</sup> The ten expiration dates were December 17, 18, 19, 20, 21, 24, 26, 27, 28 and 31, 2001. See Confirmation dated October 17, 2001, between HSBC and TTP (the "Confirmation").

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TAC, Silverlight and HS have advised us that there were several reasons for purchasing the interest in TTP rather than purchasing the Portfolio directly. TAC determined that it was likely to be less expensive to purchase Barnville's membership interest in TTP than to try to directly acquire the Portfolio in the open market because of (i) the potential detrimental effect that a purchase of a large block of stock might have on the market price of such stocks, and (ii) the lower transaction costs involved to purchase Barnville's membership interest in TTP (which already held the Portfolio). In addition, HS was interested in obtaining TTP to be able to use it as an entity for making additional investments in the future.

On September 28, 2001, pursuant to the period HS and CS Agreements for Complete Redemption of Limited Partnership Interest in Silverlight (together, the "Complete Redemption Agreements") HS' and CS' partnership interests in Silverlight<sup>25</sup> were completely redeemed in exchange for all of the shares of stock in TAC ("TAC Stock"). HS received 32.76 shares of TAC Stock and CS received 17.24 shares of TAC Stock. Prior to the redemption, HS and CS owned over 90% of the interests in Silverlight, and Silverlight owned 100% of the TAC stock. Silverlight did not make any cash payments to HS or CS as part of their redemption.

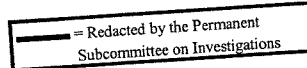
The Complete Redemption Agreements provided, among other things, for a true-up between HS and Silverlight, and between CS and Silverlight in the event that the fair market value of the shares of TAC Stock ("Share Value") was not precisely equal to the fair market value of HS' and CS' respective interest in Silverlight ("Redemption Value"), in the form of a payment to be made no later than: (i) the later of seven days after the determination of the Share Value, or (ii) December 31, 2001 (the "Equalization Payment"). As of the close of business on September 21, 2001, HS' and CS' Redemption Values were \$454,444,206 and \$238,986,443, respectively. On December 31, 2001, HS and CS each made an Equalization Payment, plus interest, in the total amount of \$18,719,279 and \$10,018,195, respectively. For purposes of the Opinions rendered hereunder, MK has represented to us that the Equalization Payments are properly treated for U.S. Federal income tax purposes as payments by HS and CS to Silverlight for the purchase of a portion of TAC Stock.<sup>26</sup>

On October 18, 2001, CS contributed her 1% membership interest in TTP (which she had purchased previously from Euram) to the capital of Glen Gale Corporation ("Glen Gale"), a Delaware corporation, wholly owned by CS. Subsequently, on October 22, 2001, CS contributed 37,546 shares of FFWW stock and assigned all of her rights under the Disney

<sup>25</sup> HS and CS had acquired their interests in Silverlight in nonrecognition transactions in the form of partnership distributions from [REDACTED]. In August 2000, [REDACTED] and [REDACTED] each made a transfer of all of its assets and liabilities to Silverlight in an exchange described in section 721, and as part of the same plan [REDACTED] and [REDACTED] liquidated and distributed their interests in Silverlight to their partners.

<sup>26</sup> We note that we have not been asked, nor have we independently undertaken, an analysis of the treatment of the Equalization Payment for U.S. Federal income tax purposes.

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Agreement relating thereto to the capital of Glen Gale. Thereafter, Glen Gale contributed the FFWW stock and all of the rights under the Disney Agreement to the capital of TTP.

Also, on October 22, 2001, HS, CS, and [REDACTED] contributed an aggregate of 3,717,029 shares of FFWW stock and assigned all of their rights appurtenant thereto under the Disney Agreement to the capital of TAC.

On the same day TAC and [REDACTED] concurrently contributed 3,717,029 and 37,546 shares, respectively, of Class B common stock of FFWW along with all of the rights appurtenant thereto under the Disney Agreement to the capital of TTP. TAC was the managing member and owned 99% of TTP while Glen Gale owned the remaining 1% of TTP. HS and CS gave notice to FBC and News of these transfers by letter dated October 22, 2001, and therein stated that TTP "absolutely and irrevocably agrees to be bound by the provisions of the Agreement (the Amended SSA) related to the transferred Shares."

Two days later, on October 24, 2001, the sale of FFWW was consummated with Disney; TTP transferred Certificate Number 28 representing its 3,754,575 shares of Class B common stock of FFWW to Disney for cash. Silverlight also transferred its 4,165,425 shares of Class B common stock of FFWW to Disney for cash. (We understand that Silverlight used the cash it received upon the transfer of the FFWW stock to Disney plus an additional \$57,458,667.37 borrowed from TTP to pay off the Loan in full and satisfy all of its other obligations under the Credit Agreement.)

We understand that on November 12, 2001, an Unwind Event (as that term is defined in the Confirmation)<sup>27/</sup> in respect of 75% of the Notional Amount of the Collar occurred. In connection therewith, TTP agreed to pay HSBC \$60,967,793.75. See Letter dated November 12, 2001, HSBC to TTP and acknowledged by CW. On November 13, 2001, an Unwind Event with regard to the remaining 25% of the Notional Amount of the Collar occurred. Consequently, by letter dated November 14, 2001, HSBC and TTP entered into a Letter Agreement dated as of November 13, 2001, with respect to the Collar (the "Amended Transaction Cancellation Agreement") pursuant to which TTP and HSBC were desirous of canceling the Collar. TTP agreed pursuant to the Amended Transaction Cancellation Agreement to pay HSBC \$24,268,523.07. See "Collar Analysis" as supplied to us as part of the books and records of TTP and verified by Quellos as accurate, attached hereto as Exhibit B. TTP's obligations under the Collar, therefore, were terminated. All of the positions constituting the Collar were terminated in November 2001. In consideration of the termination of the Collar, TTP agreed to pay HSBC a total of \$85,236,317.

We have been advised that on November 12 and 13, 2001, 75% and 25%, respectively, of the Portfolio was sold by TTP. The amount of gains and losses with respect to

<sup>27/</sup> Paragraph 8 of the Confirmation sets forth what constitutes an "Unwind Event" and the consequences thereof as it relates to the Collar.

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those sales of the Portfolio is set forth in a chart labeled Exhibit A attached hereto, as supplied to us from TTP and verified by Quellos as accurate.<sup>28/</sup>

The sales of the Portfolio and the sales executed pursuant to the termination of the Collar were over a publicly traded market and, thus, it is presumed such sales were not made to a person related to TTP. All of the TTP Losses are attributable to the disposition of property producing dividends or held for investment, or both. When TTP sold the Portfolio, it was holding the stocks comprising the Portfolio as a capital assets.

#### REPRESENTATIONS

In rendering this Opinion, we have relied on the representations of the individuals and entities listed below and attached as Schedule A.

1. Matthew G. Krane, as counsel to Silverlight, Haim Saban, Cheryl Saban, TAC, TTP, and as Trustee of the Trusts.
2. Haim Saban, individually.
3. Cheryl Saban, individually.
4. Chuck Wilk, as a principal of Quellos.
5. Thomas Glen Leo, partner of the law firm of Akin, Gump, Strauss, Hauer & Feld, L.L.P., as counsel to Silverlight.
6. A. Nicholson, as Director of Barnville (representations supplied by TAC).
7. John Staddon, as Director of Euram (representations supplied to CS).
8. Haim Saban, as President of TAC.
9. Haim Saban, as President of TAC, managing member of TTP.

#### DOCUMENTATION REVIEWED BY US

In connection with the preparation of this Opinion, we have reviewed the documents contained in the attached Schedule B.

<sup>28/</sup> We have not been asked, nor have we independently undertaken, to verify the accuracy of the numbers set forth in the chart.

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**LEGAL ANALYSIS OF MATERIAL**  
**UNITED STATES FEDERAL INCOME TAX ISSUES**

**I. PARTNERSHIP STATUS**

Under sections 701 and 702, a partnership is treated as a flow-through entity for U.S. Federal income tax purposes. Treas. Reg. section 301.7701-3(b)(1) provides that a domestic eligible entity that has two or more members and does not elect to be classified as a corporation will be classified as a partnership for federal income tax purposes. TTP was validly formed by Barnville and Euram as a limited liability company under Delaware law and did not, at any time, elect under Treas. Reg. section 301.7701-3(c) to be taxed as a corporation. Thus, TTP would be treated as a partnership for U.S. Federal income tax purposes under Treas. Reg. section 301.7701-3.

The courts have held that a partnership will be respected for federal tax purposes if the parties join together to jointly conduct a business and share the profits and losses or both. See, e.g., *Comm'r v. Culbertson*, 337 U.S. 733, 741 (1949). See also *Knight v. Comm'r*, 115 T.C. 506 (2000) (upholding validity of a newly formed family limited partnership); *Estate of Albert Strangi v. Comm'r*, 115 T.C. 478 (2000), *aff'd in relevant part sub nom. Gulig v. Comm'r*, 293 F.3d 279 (5th Cir. 2002) (upholding validity of a newly formed family limited partnership); *70 Acre Recognition Equipment Partnership v. Comm'r*, 72 T.C.M. (CCH) 1508 (1996) (upholding validity of a partnership). Compare *ASA Investorings Partnership v. Comm'r*, 201 F.3d 505 (D.C. Cir. 2000), with *Boca Investorings Partnership v. United States*, 167 F. Supp. 2d 298 (D.D.C. 2001), appeal docketed, No. 01-5429 (D.C. Cir. Feb. 19, 2002) (discussed below).

In *Estate of Albert Strangi*, supra, the Tax Court stated:

Taxpayers are generally free to structure transactions as they please, even if motivated by tax-avoidance considerations. See *Gregory v. Helvering*, 293 U.S. 465, 469 (1935); *Yosha v. Comm'r*, 861 F.2d 494, 497 (7th Cir. 1988), *aff'g. Glass v. Comm'r*, 87 T.C. 1087 (1986).

*Strangi*, 115 T.C. at 484. The Tax Court then held:

[The Partnership] was validly formed under State law. The formalities were followed, and the proverbial "i's were dotted" and "t's were crossed." The partnership, as a legal matter, changed the relationships between decedent and his heirs and decedent and actual and potential creditors. Regardless of subjective intentions, the partnership had sufficient substance to be recognized for tax purposes. Its existence would not be disregarded by potential

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purchasers of decedent's assets, and we do not disregard it in this case.

*Id.* at 486-87.

In *Culbertson*, the Supreme Court reasoned that in determining whether there was a true partnership for income tax purposes, "[t]he question is . . . whether, considering all the facts – the agreement, the conduct of the parties in execution of its provisions, their statements, the testimony of disinterested persons, the relationship of the parties, their respective abilities and capital contributions, the actual control of income and the purposes for which it is used, and any other facts throwing light on their true intent – the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise." *Culbertson*, 337 U.S. at 742 (footnote omitted). See also *70 Acre Recognition Equipment Partnership v. Comm'r*, 72 T.C.M. (CCH) at 1508 (citing language of *Culbertson* as the inquiry for determining whether a partnership exists); *Sirrine Building No. 1 v. Comm'r*, 69 T.C.M. (CCH) 2476 (1995) (citing language of *Culbertson* as the test for determining whether an entity is a partnership); *Smith's Estate v. Comm'r*, 313 F.2d 724 (8th Cir. 1963) (declaring *Culbertson* a landmark case in determining what constitutes a valid partnership for federal tax purposes); *Luna v. Comm'r*, 42 T.C. 1067 (1964) (citing *Culbertson* as asking essential question of whether the parties intended to join together).

The Tax Court applied similar reasoning in *Brannen v. Commissioner*, 78 T.C. 471 (1982), in which neither party raised the issue of whether a valid partnership existed where there was a lack of profit motive. In a footnote, the Tax Court noted that:

[The entity] was formed by a formal partnership agreement covering the rights and liabilities of the partners, the partnership filed returns of income, and books and records were maintained on behalf of the partnership. On the basis of this record, it appears that [the entity] was a partnership.

*Brannen* at 512 (footnote 16) (citing *Madison Gas & Electric Co. v. Comm'r*, 72 T.C. 521, 558-63 (1979) and *Luna v. Comm'r*, 42 T.C. at 1077-78).

In *Boca, supra*, the court referred to the "four basic attributes" of a partnership outlined by the Tax Court in *S & M Plumbing Co. v. Comm'r*, 55 T.C. 702, 707 (1971), as the factors to examine in determining whether a partnership exists. These four attributes are: (1) the express or implied intent of the parties to form a partnership, (2) the contribution of money, property, and/or services to the partnership by each party, (3) an agreement among the parties for joint proprietorship and control, and (4) an agreement among the parties to share profits. In *Boca*, the court concluded that because the "four basic attributes" were present, and because there was a legitimate business purpose for the creation of the partnership, it was irrelevant if one of the partners was motivated in part to organize the partnership by a desire to reduce taxes.

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Similarly, in this instance, TTP should be respected as a partnership for Federal income tax purposes because here Barnville and Euram acted in good faith with a business purpose (*i.e.*, to obtain a profit above the market price on the Portfolio) in joining together in the venture. In addition, Barnville and Euram contributed the Portfolio and management consulting services, respectively, to TTP as capital contributions, intended for TTP to be treated as a partnership, and entered into an Operating Agreement outlining each members' rights and responsibilities. Likewise, TAC and CS purchased their TTP membership interests from Barnville and Euram, respectively, in good faith and with a business purpose (*i.e.*, an intent to earn a short term profit). Thus, TTP should be viewed as having "sufficient substance to be recognized for tax purposes" as a partnership.

## II. AMOUNT OF TTP LOSSES

### A. TTP's Losses on the Sale of the Portfolio

TTP will recognize gain or loss on the sale of the Portfolio equal to the difference between the amount realized from such sale and TTP's adjusted basis in the Portfolio. See sections 1001(a) and (c). Based upon the books and records of TTP provided to us and the chart attached hereto as Exhibit A (which has been verified by Quellos as accurate), TTP's aggregate adjusted basis in the Portfolio was \$1,480,941,293, and its aggregate amount realized from the sale of the Portfolio was \$898,788,205. Accordingly, based upon the books and records of TTP supplied to us and the chart attached hereto as Exhibit A (which has been verified by Quellos as accurate), the aggregate amount of the loss recognized by TTP from the sale or exchange of the Portfolio was \$582,153,086. For purposes of this computation, the determination of TTP's adjusted basis in the Portfolio is discussed directly below.<sup>29/</sup>

#### 1. TTP's Adjusted Basis in the Portfolio

Section 723 provides that "[t]he basis of property contributed to a partnership by a partner shall be the adjusted basis of such property to the contributing partner at the time of the contribution increased by the amount (if any) of gain recognized under section 721(b) to the contributing partner at such time." Thus, absent any recognition of gain by the contributing partner, a partnership's basis in contributed property will equal the adjusted basis that the contributing partner had in the property immediately before the contribution.

<sup>29/</sup> We note that we have not been asked, nor have we independently undertaken, to verify the accuracy of these numbers. We have relied upon the books and records of TTP supplied to us. Quellos received the books and records of TTP for the periods prior to September 24, 2001 from Euram and provided us with a copy of such in connection with this Opinion. The gains and losses recognized by TTP on the sale of the Portfolio and the unwind of the Collar are set forth on Exhibits A and B, respectively, attached hereto and verified by Quellos as accurate.

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Under section 721(a), no gain or loss is recognized by a partnership or its partners upon the contribution of property to the partnership in exchange for a partnership interest. In the instant case, TTP was validly formed as a Delaware limited liability company and did not elect to be taxed as a corporation under Treas. Reg. section 301.7701-3(c), therefore, TTP should be considered a partnership when Barnville contributed the Portfolio in exchange for its 99% membership interest for tax purposes under Treas. Reg. section 301.7701-3(b)(1). In addition, Barnville's transfer of the Portfolio to TTP was not considered a sale of the Portfolio to TTP, and did not result in the receipt by Barnville of money or other consideration, including any debt obligations. Further, the transfer of the Portfolio by Barnville to TTP was for a bona fide non-tax business purpose, did not lack economic substance and was not a sham transaction. Thus, the transfer of the Portfolio by Barnville to TTP qualified as a contribution of property from a partner to a partnership under section 721(a).

Section 721(b) provides that the nonrecognition rule of section 721(a) will not apply to gain realized on a transfer of property to a partnership that would be treated as an investment company (within the meaning of section 351) if the partnership were incorporated. For an entity to be treated as an investment company for purposes of section 351, the contributions must result "directly or indirectly, in diversification of the transferors' interests." Treas. Reg. section 1.351-1(c)(1)(i). A transfer ordinarily results in the diversification of the transferors' interests if two or more persons transfer nonidentical assets to a corporation in the exchange. Treas. Reg. section 1.351-1(c)(5). In this case, because Euram's contribution to TTP came in the form of management and consulting services, Barnville was the only member to transfer property to TTP. Thus, since there was no diversification of Barnville's interest, TTP would not have been treated as an investment company within the meaning of section 351. Therefore, no gain should be recognized by Barnville under section 721(b) upon the contribution of the Portfolio to TTP.

Accordingly, under section 723, TTP's tax basis in the Portfolio should be the same as Barnville's adjusted tax basis in the Portfolio immediately before the contribution.

**2. No Adjustment to TTP's Tax Basis in the Portfolio upon Purchase of TTP Interests by TAC and CS**

TTP has not and we understand that it will not make a section 754 election which would affect its taxable year in which TAC and CS acquired their membership interests in TTP.<sup>30/</sup> Consequently, no adjustment may be made to the basis of any of the Portfolio under section 743(a) as a result of the acquisition by TAC and CS of their respective membership interests in TTP.

<sup>30/</sup> If TTP had such an election in place, the basis of TTP's assets would be adjusted to their fair market value.

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The technical termination of TTP upon Barnville's sale of its 99% membership interest in TTP on September 24, 2001, under section 708(b)(1)(B) (discussed *infra*), likewise did not result in any adjustment that would reduce the basis of the Portfolio. Treas. Reg. section 1.708-1(b)(4) provides that the following transactions are deemed to have occurred upon a technical termination: (i) TTP is deemed to have contributed all its assets and liabilities to a new partnership (the "New LLC") in exchange for an interest in the New LLC; and (ii) TTP is deemed, immediately thereafter, to have distributed interests in the New LLC to TAC and CS in proportion to their TTP interests and in liquidation of TTP. Because no adjustment is made to the basis of TTP's assets by reason of their deemed contribution to the New LLC, and because no adjustment is made to the basis of TTP's assets by reason of the deemed distribution of interests in the New LLC to TAC and CS, the New LLC obtains the same tax basis in the assets of TTP that TTP had prior to the technical termination. Accordingly, without a section 754 election and absent the application of the Partnership Anti-Abuse Regulations (see discussion *infra*), under the rules set forth in Treas. Reg. section 1.708-1(b)(4), TTP's basis in the Portfolio should not be adjusted to fair market value at the time of TAC's and CS' purchase of the TTP membership interests.

#### B. TTP's Losses on the Termination of the Collar

The cost of a put option is a nondeductible capital expenditure and the cost is also the purchaser's adjusted basis in the put. Rev. Rul. 71-521, 1971-2 C.B. 313. Gain or loss attributable to the sale or exchange of, or loss attributable to the failure to exercise a put option is considered gain or loss from the sale or exchange of property which has the same character as the property to which the option relates has in the taxpayer's hands. Section 1234(a).

The seller of a call option does not include the premium received for the call in income at the time of receipt. Rather, the premium is included in income when the call option expires, or when the seller sells the underlying stock pursuant to the exercise, or when the seller engages in a closing transaction. Rev. Rul. 58-234, 1958-1 C.B. 279. A closing transaction is defined under section 1234(b)(2)(A) as "any termination of the taxpayer's obligation under an option in property other than through the exercise or lapse of the option." If the seller enters into a closing transaction, the difference between the amount paid to close the call and the premium is short-term capital gain or loss.

In the situation herein, TTP entered into the Collar comprised of ten identical puts and calls with ten different expiration dates in December 2001. Based upon the books and records of TTP supplied to us, and specifically the Collar Analysis attached as Exhibit B hereto and verified by Quellos as accurate, on September 24, 2001, TTP acquired the Collar by purchasing the ten Puts at a cost of \$76,886,112 and simultaneously selling ten Calls for which it received \$45,362,806. The cost of the Puts was TTP's basis in the Puts. The amount received for selling the Calls was not income to TTP in September 2001. On November 12, 2001, an Unwind Event occurred with respect to 75% of the Collar, and on November 13, 2001, HSBC and TTP agreed to terminate the Collar altogether. Upon the Unwind Event and the termination,

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TTP's books and records provide that TTP received a total of \$10,091,277 to close out the Put positions and paid a total of \$95,627,594 to close out the Call positions comprising the Collar. Hence, TTP incurred aggregate losses of \$66,794,835 and \$49,964,788 on the Put and Call options, respectively. TTP's total loss incurred with respect to the Collar transactions was, therefore, \$116,759,623 all of which will constitute a short-term capital loss.<sup>31/</sup>

**III. ALL TTP LOSSES REALIZED IN TTP'S TAXABLE YEAR ENDING  
DECEMBER 31, 2001**

Based upon the discussion below, all of the TTP Losses were realized in TTP's taxable year ending December 31, 2001, and no Code section, rule, regulation, or principal of Federal income tax law should apply to disallow any deductions claimed by TTP from the TTP Losses.

**A. TTP Was Owner of the Portfolio and Puts and Grantor of  
Calls for Tax Purposes**

At the time the Portfolio was sold, TTP was the owner of the Portfolio and the Puts, and the grantor (seller) of the Calls for tax purposes.

As described above, Barnville contributed the Portfolio to TTP in exchange for a 99% membership interest in TTP. TTP held the Portfolio primarily for investment purposes, and some of the stocks in the Portfolio paid dividends. TTP retained ownership of the Portfolio at all times prior to November 12, 2001; therefore, TTP was the owner for tax purposes of the Portfolio when it sold the Portfolio in November 2001. See attached Exhibit A.

On September 24, 2001, TTP entered into the Collar which was comprised of the ten virtually identical Calls and Puts. TTP acquired the Collar in order to hedge its risk of holding the Portfolio while still retaining some upside potential in its equity investments. (HSBC also required that TTP enter into the Collar as a condition to granting the loan to Silverlight.) The Collar remained in place until the Unwind Event occurred on November 12, 2001, and the Collar was terminated on November 13, 2001. TTP was the owner of the Collar for tax purposes when the Collar was completely terminated on November 13, 2001.

**B. Disposition of the Portfolio and Puts and Termination of Calls  
Completed by TTP in November 2001.**

The disposition of the Portfolio and the termination of the Collar resulted in the realization of the losses set forth in Exhibits A and B, attached hereto, as supplied to us constituting the books and records of TTP and verified by Quellos as accurate.

<sup>31/</sup> See Exhibit B.

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In that regard, section 165(a) provides:

There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

Treas. Reg. section 1.165-1(b) provides further that to be allowable as a deduction under section 165(a), a loss must be evidenced by closed and completed transactions, fixed by identifiable events, and actually sustained during the taxable year. According to the Regulations, the loss must be bona fide, and substance rather than "mere form" governs in determining the deductibility of the loss. Treas. Reg. section 1.165-1(b). In the instant situation, the sale of the Portfolio and the disposition of the Collar by TTP were closed and completed transactions and fixed by identifiable events occurring in November 2001. Any losses likely will be treated as bona fide and as having sufficient economic substance to be sustained. Consequently, any losses incurred by TTP would likely meet the requirements of section 165(a).

The Service could attempt to challenge such a conclusion. In *ACM Partnership v. Comm'r*, 73 T.C.M. (CCH) 2189 (1997), *aff'd in part and rev'd in part*, 157 F.3d 231, 248 (3d Cir. 1998), *cert. denied* 119 U.S. 1017 (1999), the Third Circuit Court of Appeals disallowed the losses in question by applying the sham transaction doctrine and citing the Regulations under section 165. The taxpayer in *ACM* acknowledged in its own submissions that the transaction was structured so that the securities at issue were purchased and sold at the same price. The Appellate Court held:

As the Supreme Court emphasized in *Cottage Savings*, deductions are allowable only where the taxpayer has sustained a "bona fide" loss as determined by its "[s]ubstance and not mere form." According to ACM's own synopsis of the transactions, the contingent installment exchange would not generate actual economic losses. Rather, ACM would sell the Citicorp notes for the same price at which they were acquired, generating only tax losses which offset precisely the tax gains reported earlier in the transaction with no net loss or gain from the disposition. Tax losses such as these, which are purely an artifact of tax accounting methods and which do not correspond to any actual economic losses, do not constitute the type of "bona fide" losses that are deductible under the Internal Revenue Code and regulations.

157 F.3d at 252 (citations omitted).

The court's concept of a bona fide loss is discussed in the *ACM* case at footnote 31, which provides:

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While it is clear that a transaction such as ACM's that has neither objective non-tax economic effects nor subjective non-tax purposes constitutes an economic sham whose tax consequences must be disregarded, and equally clear that a transaction that has both objective non-tax economic significance and subjective non-tax purposes constitutes an economically substantive transaction whose tax consequences must be respected, it is also well established that where a transaction objectively affects the taxpayer's net economic position, legal relations, or non-tax business interests, it will not be disregarded merely because it was motivated by tax considerations. *See, e.g., Gregory*, 293 U.S. at 468-69, 55 S. Ct. at 267 ("if a reorganization in reality was effected . . . the ulterior purpose will be disregarded"), *Northern Indiana Pub. Serv. Co.*, 115 F.3d at 512 (emphasizing that *Gregory* and its progeny "do not allow the Commissioner to disregard economic transactions . . . which result in actual, non-tax-related changes in economic position" regardless of "tax avoidance motive" and refusing to disregard role of taxpayer's foreign subsidiary which performed a "recognizable business activity" of securing loans and processing payments for parent in foreign markets in exchange for legitimate profit); *Kraft Foods Co. v. Commissioner*, 232 F.2d 118, 127-28 & n. 19 (2d Cir. 1956) (refusing to disregard tax effects of debenture issue which "affected . . . legal relations" between taxpayer and its corporate parent by financing subsidiary's acquisition of venture used to further its non-tax business interests). In analyzing both the objective and subjective aspects of ACM's transaction in this case where the objective attributes of an economically substantive transaction were lacking, we do not intend to suggest that a transaction which has actual, objective effects on a taxpayer's non-tax affairs must be disregarded merely because it was motivated by tax considerations.

157 F.3d at 248 n.31.

In the present situation, valid non-tax reasons existed for Barnville's acquisition of the Portfolio, for its contribution to TTP, and for TTP's ultimate sale of the Portfolio. In addition, TTP acquired the Collar for valid non-tax reasons, including to hedge its risk of holding the Portfolio while retaining some of the upside potential. Thus, TTP likely would not be treated as engaging in economic shams. Consequently, the reasoning set forth in ACM for concluding that a loss is not "bona fide" likely would not be applicable to the TTP Losses.

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Similarly, in *Shoenberg v. Commissioner*, 77 F.2d 446 (8th Cir.), *cert. denied*, 296 U.S. 586 (1935), the Eighth Circuit Court of Appeals denied a loss deduction to an investor who sold stock at a loss and on the same day bought the same number of identical shares through his investment company. A little more than thirty days later, the investor purchased the shares from his investment company at a lower price than that for which he had originally sold them. The Eighth Circuit denied the investor's loss deduction, stating that "where such sale is made as part of a plan whereby substantially identical property is to be reacquired and that plan is carried out, the realization of loss is not genuine and substantial; it is not real." *Id.* at 449. Economically, the transaction was a circular transaction with no economic substance. *Shoenberg*, is a case in which the court held that a loss was not realized by the taxpayer because the taxpayer held the same beneficial interest in the purportedly sold assets both before and after the sales. As noted above, TTP did not continue to own, beneficially or otherwise, an interest in the Portfolio or the Collar, the sale and disposition of which generated the TTP Losses. Accordingly, the reasoning in *Shoenberg* should not apply in this instance, and TTP likely should be able to recognize the TTP Losses and deduct such losses under section 165(a).

Unlike those cases, the Collar afforded TTP the opportunity to limit its downside risk of loss while retaining the opportunity to make a profit in a relatively short time frame. Based upon the foregoing, the losses from the disposition of the Collar likely would be allowable under section 165(a).

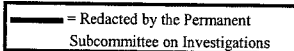
In conclusion, the disposition by TTP of the Portfolio and the Collar were closed and completed transactions and fixed by identifiable events on November 12-13, 2001. Any tax losses likely will be treated as bona fide and as having sufficient economic substance to be sustained. Consequently, any tax losses incurred by TTP attributable to the sale of the Portfolio and the disposition of the Collar would likely meet the requirements of section 165(a).

C. Disposition of the Portfolio and Termination of the Collar Occurred in TTP's Required Taxable Year Beginning October 1, 2001 and Ending December 31, 2001

1. On September 25, 2001, TTP adopted the taxable year of TAC as its taxable year.

On September 24, 2001, TAC purchased Barnville's 99% membership interest in TTP. Consequently, TTP experienced a technical termination under section 708(b)(1)(B) because there was an exchange of 50% or more of the total interest in its capital and profits. In addition, Treas. Reg. section 1.708-1(b)(3) provides that a partnership taxable year closes with respect to all partners on the date on which the partnership terminates. *See also* section 706(c)(1) (the partnership taxable year closes in the event of a partnership termination). Accordingly, TTP's partnership year closed on September 24, 2001, the date of its technical termination under Treas. Reg. section 1.708-1(b)(3)(ii).

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Under section 706(b)(1)(B)(i), TTP was required after its termination to adopt the same tax year as the partner or partners owning more than 50% of the partnership's profits and capital (the "majority interest partner"). This majority interest must be determined on a specific "testing day" and, under section 706(b)(4)(A)(ii), the first day of a partnership's tax year is considered such a "testing day." On September 25, 2001, the first day of TTP's tax year, TAC held more than a 50% aggregate interest in TTP's profits and capital. Thus, on September 25, 2001, TTP was required to adopt the same tax year as TAC, its majority interest partner.

TAC had since its formation validly adopted the fiscal year ending September 30, 2001, as its initial taxable year and kept its books and records on the basis of a fiscal year ending September 30. Thus, on September 25, 2001, TTP was required under section 706(b)(1)(B)(i) to adopt TAC's fiscal year ending September 30, 2001 as its taxable year.

2. On October 1, 2001, TTP was required to change its taxable year to TAC's new taxable year.

On December 10, 2001, TAC filed a timely election with the Service under section 1362(a) to be treated as an S corporation effective for its taxable year beginning October 1, 2001. See Form 2553, Election by a Small Business Corporation, dated December 10, 2001; see also Notice of Acceptance as an S corporation from the Service, dated January 28, 2002. Since TAC was at all times (i) a domestic corporation that was not an ineligible corporation within the meaning of section 1361(b)(2); (ii) 100%-owned by HS and CS, both individuals and U.S. citizens; and (iii) based on the representations of MK, the Debenture issued by TAC (and held by [REDACTED]) is bona fide debt for Federal income tax purposes and, accordingly, the Debenture will likely not constitute a second class of stock for purposes of section 1361(b)(1)(D),<sup>32/</sup> TAC qualified as an S corporation under section 1361(b), and thus made a valid election to be an S corporation for its taxable year beginning October 1, 2001.

Under section 1378, the taxable year of an S corporation must be a permitted year, generally, a calendar year. In connection with its valid S corporation election, TAC was, therefore, required to change its taxable year to the calendar year beginning October 1, 2001. Thus, TAC's taxable year ended December 31, 2001. Accordingly, on October 1, 2001, the first day of TTP's taxable year and a testing day under section 706(b)(4)(A)(ii), because TAC was required under section 1378 to change its taxable year to the calendar year, TTP's taxable year

<sup>32/</sup> The straight debt safe harbor under section 1361(c)(5) will not apply to the Debenture since the holder of the Debenture, Cassano, is a partnership and not a permitted creditor under the safe harbor. Instead, general principles of Federal income tax law determines whether the Debenture is treated as debt or as a second class of stock. Treas. Reg. section 1.1361-1(f)(4)(ii)(1).

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also was required to change to the calendar year.<sup>33/</sup> See sections 706(b)(1)(B)(i), 706(b)(4) and 706(b)(5).

Based on the above discussion, the sale of the Portfolio, which occurred on November 12 and 13, 2001, occurred during TTP's taxable year beginning October 1, 2001 and ending December 31, 2001.

#### **D. Potential Limitations on Recognition of TTP Losses**

The Service may assert that one or more of the following Code sections, rules, regulations, or principles of U.S. Federal income tax law applies to disallow TTP's deduction for the TTP Losses, however it is likely that the Service would be unsuccessful in such an attempt.

##### **1. Partnership Anti-Abuse Regulations**

The Service could seek to challenge the formation of TTP and recast the tax treatment of TTP's activities through the application of Treas. Reg. section 1.701-2 (the "Partnership Anti-Abuse Regulations"). The Partnership Anti-Abuse Regulations grant the Service broad authority to recast a transaction if a partnership is formed or availed of in connection with such transaction, and a principal purpose of such transaction is to reduce substantially the present value of the partners' aggregate U.S. Federal income tax liability in a manner that is inconsistent with the intent of subchapter K of the Code, which governs partnerships.

The Anti-Abuse Regulations state that the intent of subchapter K is to permit taxpayers to conduct joint business activities (including investment activities) without incurring entity-level tax. Treas. Reg. section 1.701-2(a) provides that the following requirements are implicit in the intent of subchapter K:

- (1) The partnership must be bona fide and each partnership transaction or series of related transactions . . . must be entered into for a substantial business purpose.
- (2) The form of each partnership transaction must be respected under substance over form principles.
- (3) [T]he tax consequences . . . to each partner of partnership operations and of transactions between the partner and the

<sup>33/</sup> The exemption under section 706(b)(4)(B), which exempts a partnership that is required to change its tax year to a "majority interest taxable year" from changing to another tax year for either of the two tax years following the year of change, does not apply in the instant case because TTP's adoption of TAC's taxable year on September 25, 2001, was the adoption by TTP of its initial taxable year after its termination under section 708(b)(1)(B).

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partnership must accurately reflect the partners' economic agreement and clearly reflect the partners' income . . . .

Requirement (3) goes on to provide, however, that "because certain provisions of subchapter K and the regulations thereunder were adopted to promote administrative convenience and other policy objectives," this third requirement will be satisfied if the "ultimate tax results" are "clearly contemplated by that provision." Where the three requirements are not satisfied, the Service is granted authority, among other remedial measures, to disregard the partnership in whole or in part, or to adjust or modify the claimed tax treatment.

The first implicit intent of subchapter K, that a partnership is bona fide and that transactions be entered into for a business purpose, restates well established principles. *See, e.g., Culbertson, supra; Gregory, supra; Rice's Toyota World, Inc., supra.* However, the Anti-Abuse Regulations do not elaborate on what is meant by these terms, and also include the term "substantial" in the business purpose requirement. *See* Treas. Reg. section 1.701-2(a)(1). *Culbertson* held that a partnership would be respected for tax purposes if the parties had joined together to jointly conduct a business and share the profits. As Justice Frankfurter expressed in his concurring opinion:

In plain English, if an arrangement among men is not an arrangement which puts them all in the same business boat, then they cannot get into the same boat merely to seek the benefits of [the partnership tax provisions]. But if they are in the same business boat, although they may have varying rewards and varied responsibilities, they do not cease to be in it when the tax collector appears.

337 U.S. at 754.

The determination of the applicability of the Partnership Anti-Abuse Regulations requires a facts and circumstances analysis of the transaction at issue. This analysis, in turn, requires a comparison of the purported business purpose of the transaction with the claimed tax benefits resulting from the transaction. Treas. Reg. section 1.701-2(c) contains a non-exclusive list of factors that indicate, but do not establish, that a partnership was formed or availed of with a principal purpose of tax reduction in a manner inconsistent with the intent of subchapter K. The factors are:

1. The present value of the partners' aggregate federal tax liability is substantially less than had the partners owned the partnership's assets and conducted the partnership's business directly.
2. The present value of the partners' aggregate federal tax liability is substantially less than if purportedly separate transactions that are

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designed to achieve a particular end result are treated as steps in a single transaction.

3. One or more partners who are necessary to achieve the claimed tax results either have a nominal interest in the partnership, are substantially protected from any risk of loss from the partnership's activities, or have little or no participation in the profits from the partnership's activities other than a preferred return in the nature of a payment for the use of capital.
4. Substantially all of the partners are related.
5. Partnership items are allocated in accordance with the literal language of Treas. Reg. sections 1.704-1 and 1.704-2 but the results are inconsistent with the purpose of section 704(b).
6. The benefits and burdens of ownership of property nominally contributed to the partnership are in substantial part retained by the contributing partner.
7. The benefits and burdens of ownership of partnership property are in substantial part shifted to the distributee partner before or after the property is actually distributed to the distributee partner.

The presence or absence of any one of these factors does not, according to the Regulations, create a presumption that a partnership was (or was not) used in a manner inconsistent with subchapter K.

As for the first factor, it is present here. If the Portfolio had been purchased directly by TAC rather than its purchasing an interest in TTP which held the Portfolio, there likely would be a greater Federal income tax liability arising from the sale of the Portfolio than there was when TTP disposed of the Portfolio. However, since one of the goals of investing in TTP was to provide an extra layer of protection between TAC and CS (and subsequently Glen Gale), as partners of TTP, and unforeseen creditors, it would have been impossible for TAC, CS and Glen Gale to invest in the Portfolio and enter into the Collar "directly," while at the same time limiting their liability exposure, without utilizing a limited liability vehicle. Because a limited liability vehicle with two or more members was necessary to achieve this protection, similar tax results would likely have been obtained through other structures.

The second factor appears to be a restatement of the "end-result" formulation of the step transaction doctrine. There is no assurance that the present value of the TTP members' aggregate Federal tax liability would necessarily be substantially less than had the members owned TTP's assets and conducted TTP's business directly, if you were to collapse all the steps of the transaction. In this case, the contribution and subsequent sale of the Portfolio held by TTP

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and the purchase and disposition of the Collar were transactions undertaken for reasons independent of each other, no step was dependent on another step, and the members of TTP were at risk with respect to each transaction. Consequently, it is likely that this factor would not be present.

The third factor is not present here, as no member has a nominal interest in TTP. Treas. Reg. section 1.701-2(d)(1), Ex. 1, indicates that a 1% interest in a partnership is not nominal. CS (and subsequently Glen Gale) acquired Euram's 1% interest in TTP, and we understand that there is no plan for any member of TTP to hold less than a 1% membership interest. Further, no member is substantially protected from risk of loss from TTP's activities.

The fourth factor is present here. Several of the partners are related.

The fifth factor relates to the allocation of partnership income. Each item of TTP income, gain, loss, or deduction will be allocated in accordance with the interests in TTP, and each member's capital account will be appropriately charged. There will be no special allocations of any item of income, gain, loss, credit, or deduction inconsistent with section 704(b).

The sixth factor is also not present here. There is no property that has been "nominally" contributed to TTP by any member. Further, all property contributed to TTP is owned by TTP, and no member has in substantial part retained the benefits and burdens of ownership of the contributed property.

Finally, the seventh factor is also not present. The benefits and burdens of ownership of TTP property will not be shifted to any distributee member before or after the property is actually distributed.

With respect to the acquisition by TAC and CS of their TTP interests, the Service might argue that the failure to cause TTP to make an election under section 754 in order to avoid a step down of the basis in the assets of TTP at the time of sale is inconsistent with the intent of subchapter K. Accordingly, it is possible that the Service might attempt to disregard the existence of TTP and treat TAC and CS as though they bought the Portfolio, Collar and other assets of TTP directly. This recharacterization of the facts would result in TAC and CS obtaining a cost basis in TTP's assets equal to their purchase price, or the Service may otherwise seek to deny TAC and CS (and subsequently Glen Gale) a deduction with respect to their allocable share of any loss recognized on a sale of the Portfolio and disposition of the Collar. However, despite the lack of making a section 754 election with respect to the acquisition by TAC and CS of Barnville's and Euram's interests in TTP, respectively, (at a time when TTP held assets the basis of which was higher than their fair market value) which may result in a timing benefit for TAC and CS, such timing benefit is a possibility clearly contemplated under the Code because section 754 is elective rather than mandatory.

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The Regulations contain examples providing guidance on determining whether a partnership was formed with or availed of a principal tax avoidance purpose in a manner inconsistent with the intent of subchapter K. See Treas. Reg. section 1.701-2(d). Those examples distinguish two cases – in Example 8 abuse is found while in Example 9 no abuse is found – involving partnerships in which the parties chose not to make a section 754 election.

Specifically, in Example 8 of the Anti-Abuse Regulations, A wished to sell depreciated property (land) to B. A, however, hoped to duplicate the built-in loss in the property. Accordingly, A, C (A's brother) and W (C's wife) formed a partnership to which A contributed the land (fair market value \$60, basis \$100) and C and W each contributed \$30 in cash (which was used to buy investment assets). Profits and losses were shared 50%, 25% and 25% among A, C and W, respectively. The partnership granted B a lease on the land for three years with a purchase option at the maturity of the lease for the land's then fair market value. In the third year, the partnership distributed the investment assets to A in liquidation of his partnership interest. Under section 732(b), A took a \$100 basis in those assets. The partnership did not make a section 754 election. A then sold the assets for their fair market value of \$60 and recognized a \$40 loss. At the end of the third year, B purchased the land for \$60 pursuant to the purchase option. The partnership, which had received a carryover \$100 basis in the land, recognized a \$40 loss, which loss was shared equally between C and W. Treas. Reg. section 1.701-2(d), Ex. 8.

Contrastingly, in Example 9, an investment partnership distributed non-marketable securities (fair market value \$100, basis \$20) in retirement to A who had been a partner for several years. A's capital account balance and basis in his partnership interest were \$100. Under section 732(b), A took a \$100 basis in the marketable securities. The partnership did not have a section 754 election in place. Since the partnership did not have to reduce the basis of its remaining assets by the \$80 basis increase that attached to the distributed assets, the remaining partners enjoyed a timing benefit with respect to the "excess" \$80 tax basis, a timing benefit that would "turn around" when the partnership ultimately liquidated. Treas. Reg. section 1.701-2(d), Ex. 9.

The use of the partnership in Example 8 as part of a plan to duplicate the tax benefits of an economic loss by failing to make a section 754 election was deemed to violate the Partnership Anti-Abuse Regulations. In Example 9, however, a low-basis asset was distributed in retirement to one partner, and the corresponding creation of a timing benefit to the remaining partners (by virtue of their retention of full basis in the partnership's remaining assets that otherwise would have been reduced had a section 754 election been in place) was not deemed to violate the Partnership Anti-Abuse Regulations. Example 9, unlike Example 8, involved an existing partnership to which the partners had contributed cash. The partnership then used that cash to purchase assets which subsequently increased in value.

In the instant case, the Service might argue that TAC's and CS' purchase of their interests in TTP, which held high basis/low value assets coupled with a section 754 election not

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being made, are facts more like those of Example 8 than of Example 9. Specifically, the Service might argue that, as in Example 8 and in contrast to Example 9, TTP is a partnership to which built-in loss assets were contributed, thereby potentially resulting in loss duplication.

Unlike the facts of Example 8, however, TTP was formed by Barnville and Euram (neither of which was related to TAC or CS) in advance of TAC's and CS' commitment to purchase the interests in TTP. Moreover, because neither Barnville nor Euram is a U.S. person for U.S. Federal income tax purposes, unlike the transaction described in Example 8, the sale of their interests to TAC and CS will not result in the duplication of U.S. Federal income tax benefits. That is, although TAC and CS (and subsequently Glen Gale) should obtain a deduction for their respective allocable share of any loss recognized by the TTP upon a sale of the Portfolio and the termination of the Collar, Barnville and Euram, because they are not U.S. persons, did not recognize U.S. Federal income tax losses when each entity sold its membership interest in TTP to TAC and CS, respectively. Rather, like the transaction described in Example 9, TAC's and CS' purchase of their interests in TTP from Barnville and Euram generally will result in a timing benefit only.<sup>34/</sup>

In summary, the critical distinction between the two examples contained in the Anti-Abuse Regulations appears to be the existence of a plan to duplicate losses for U.S. Federal income tax purposes. In Example 8, the partnership was formed solely to allow the built-in loss with respect to the land to be duplicated, whereas in Example 9, the partnership had been formed some time prior to the transaction for investment purposes. As in Example 9, Barnville and Euram had a legitimate non-tax business purpose for forming TTP, and did not have a plan to duplicate losses for U.S. Federal income tax purposes. Accordingly, it is more likely than not that the Partnership Anti-Abuse rules should not apply to TAC's and CS' purchase of their interests in TTP allowing the Service to recast the transaction.

## 2. Sham Transaction, Economic Substance and Business Purpose Doctrines

### (a) Sham Transaction Doctrine

The Joint Committee on Taxation, *Background and Present Law Relating to Tax Shelters* (JCX-19-02), March 19, 2002 ("JCT Report"), describes sham transactions as "those in which the economic activity that is purported to give rise to the desired tax benefits does not actually occur." According to the JCT Report, the sham transaction doctrine has two facets, "shams in fact" and "shams in substance," which have been described as follows:

<sup>34/</sup> That is, TAC's and CS' bases in their membership interests in TTP will be decreased by the amount of the deduction obtained by TAC and CS for their allocable share of any aggregate loss recognized by TTP with respect to a sale of the Portfolio and the termination of the Collar. As a result, TAC's and CS' gain on any ultimate disposition of their membership interests in TTP will be increased by such amounts.

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Courts have recognized two basic types of sham transactions. Shams in fact are transactions that never occur. In such shams, taxpayers claim deductions for transactions that have been created on paper but which never took place. Shams in substance are transactions that actually occurred but which lack the substance their form represents.

*United Parcel Service of America, Inc. v. Comm'r*, 78 T.C.M. (CCH) 262 at n.29 (1999), *rev'd*, 254 F.3d 1014 (11th Cir. 2001) (citing *Kirchman v. Comm'r*, 862 F.2d 1486, 1492 (11th Cir. 1989), *aff'g Glass v. Comm'r*, 87 T.C. 1087 (1986)). Here, TTP's acquisition and disposition of the Portfolio, and execution and termination of the Collar, likely would not constitute one or more "shams in fact," based upon our understanding that every activity of TTP as described in the Facts section above did in fact occur.

The JCT Report cites *Yosha v. Comm'r*, 861 F.2d 494 (7th Cir. 1988) provides an example of the "sham in substance" aspect of the sham transaction doctrine. In *Yosha*, the taxpayers entered into a series of transactions on the London Metals Exchange ("LME") that were not "shams in fact" because, as a legal and factual matter, they occurred. However, the taxpayers were fully protected against loss through arrangements by the promoter with the LME brokers, and the transactions were structured so that the taxpayers could not earn a profit from them, *i.e.*, as an economic matter the trades were voided.<sup>35</sup> Thus the taxpayers were in the position of economically, or "in substance," never having entered into the transactions. A similar analysis is applied in determining whether a taxpayer is the owner of a particular asset for tax purposes. Thus, if the taxpayer has none of the economic risks or benefits of an owner, the taxpayer would ordinarily not be treated as the owner, *i.e.*, the taxpayer's economic ownership is voided and could be viewed as a "sham in substance."

In the instant case, TTP did not enter into any arrangement that voided the economic effects of any of its investments. Consequently, TTP's acquisition and disposition of the Portfolio, and execution and termination of the Collar, likely would not constitute one or more "shams in substance."

#### (b) Business Purpose and Economic Substance Doctrines

The Service has attempted to disallow the tax consequences which result from the formation and operation of a partnership where the Service believes that such partnership was not formed with the requisite business purposes, or where separate and apart from the tax benefits, economic substance to the transaction is lacking. In the case of *Salina Partnership LP v. Commissioner*, 80 T.C.M. (CCH) 686 (2000), the Tax Court summarized the economic substance doctrine, sometimes known as the "economic substance sham transaction doctrine," as follows:

<sup>35</sup> Because the arrangements to protect against loss were made by the promoter, the court did not address the effect of *bona fide* hedging transactions with unrelated parties. Hedges provided by a party involved in the transactions were also viewed as a negative factor in *ACM* (discussed above).

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It is well settled that taxpayers generally are free to structure their business transactions as they please, even if motivated by tax avoidance considerations. See *Gregory v. Helvering*, 293 U.S. 465, 469 (1935); *Rice's Toyota World, Inc. v. Commissioner*, 81 T.C. 184, 196 (1983), *aff'd in part, rev'd in part, and remanded* 752 F.2d 89 (4th Cir. 1985). However, to be accorded recognition for tax purposes, a transaction generally is expected to have "economic substance which is compelled or encouraged by business or regulatory realities, is imbued with tax-independent considerations, and is not shaped solely by tax-avoidance features that have meaningless labels attached." *Frank Lyon Co. v. United States*, 435 U.S. 561, 583-584 (1978); see *Winn-Dixie Stores, Inc. v. Commissioner*, 113 T.C. 254, 278 (1999). This principle, which finds its origin in *Gregory v. Helvering*, *supra*, is better known as the "economic substance doctrine."

A sham transaction is one which, though it may be proper in form, lacks economic substance beyond the creation of tax benefits. *Karr v. Commissioner*, 924 F.2d 1018, 1022-1023 (11th Cir. 1991), *aff'g Smith v. Commissioner*, 93 T.C. 378 (1989). An evaluation whether a transaction is a substantive sham generally requires: (1) A subjective inquiry whether the transaction was carried out for a valid business purpose independent of tax benefits, and (2) a review of the objective economic effect of the transaction. See *Karr v. Commissioner*, *supra* at 1023; *Kirchman v. Commissioner*, 862 F.2d 1486, 1490-1491 (11th Cir. 1989), *aff'g Glass v. Commissioner*, 87 T.C. 1087 (1986); see also *ACM Partnership v. Commissioner*, 157 F.3d 231, 247-248 (3d Cir. 1998), *aff'g in part and rev'g in part on another ground* T.C. Memo. 1997-115; *Casebeer v. Commissioner*, 909 F.2d 1360, 1363 (9th Cir. 1990), *aff'g in part, rev'g and remanding in part on another ground* *Larsen v. Commissioner*, 89 T.C. 1229 (1987), *aff'g* T.C. Memo. 1987-628, *aff'g Sturm v. Commissioner*, T.C. Memo. 1987-625, and *aff'g Moore v. Commissioner*, T.C. Memo. 1987-626; *Rose v. Commissioner*, 868 F.2d 851, 853-854 (6th Cir. 1989), *aff'g* 88 T.C. 386 (1987). Only after we conclude that a transaction is not an economic sham do we review the tax consequences of the transaction under the Code. See *ACM Partnership v. Commissioner*, T.C. Memo. 1997-115, *aff'd in part and rev'd in part on another ground* 157 F.3d 231 (3d Cir. 1998).

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A taxpayer may establish that a transaction was entered into for a valid business purpose if the transaction is "rationally related to a useful nontax purpose that is plausible in light of the taxpayer's conduct and \* \* \* economic situation." *Compaq Computer Corp. & Subs. v. Commissioner*, 113 T.C. 214, 224 (1999) (citing *ACM Partnership v. Commissioner*, *supra*); see *Kirchman v. Commissioner*, *supra* at 1490-1491. A taxpayer may establish that a transaction has objective economic consequences where the transaction appreciably affects the taxpayer's beneficial interest. See *Knetsch v. United States*, 364 U.S. 361, 366 (1960) (quoting *Gilbert v. Commissioner*, 248 F.2d 399, 411 (2d Cir. 1957) (Hand, J., dissenting)); see also *ACM Partnership v. Commissioner*, 157 F.3d at 248; *Northern Ind. Pub. Serv. Co. v. Commissioner*, 115 F.3d 506, 512 (7th Cir. 1997), *aff'g* 105 T.C. 341 (1995). Stated differently, a transaction has economic substance if it offers a reasonable opportunity for profit exclusive of tax benefits. See *Gefen v. Commissioner*, 87 T.C. 1471, 1490 (1986), and cases cited therein. Generally, there must be a reasonable expectation that nontax benefits will meet or exceed transaction costs. See *Yosha v. Commissioner*, 861 F.2d 494, 498 (7th Cir. 1988), *aff'g* *Glass v. Commissioner*, 87 T.C. 1087 (1986). Modest profits relative to substantial tax benefits are insufficient to imbue an otherwise dubious transaction with economic substance. See *Sheldon v. Commissioner*, 94 T.C. 738, 767-768 (1990); *Saba Partnership v. Commissioner*, T.C. Memo. 1999-359.

*Salina*, 80 T.C.M. (CCH) at 694 (emphasis added).

In *Salina*, the court found that "a perceived tax benefit . . . standing alone, is insufficient to render the transaction a sham in substance." *Id.* at 695. The court then concluded that the petitioner entered into the *Salina* Partnership to achieve a valid business purpose independent of tax benefits.

Likewise, the Eighth Circuit held in *IES Industries, Inc. v. United States*, 253 F.3d 350 (8th Cir. 2001), that "[t]he fact that [a taxpayer] took advantage of duly enacted tax laws in conducting [certain transactions] does not convert the transactions into shams for tax purposes." *Id.* at 356 (footnote omitted). In *IES Industries*, the taxpayer, an investor owned electric utility company, entered into American Depositary Receipt ("ADR")<sup>36/</sup> trading opportunities identified by a securities broker. The taxpayer purchased ADRs of certain companies which had

<sup>36/</sup> An ADR is a publicly traded security or receipt which represents a share of a foreign corporation held in trust by a U.S. bank, and which is fully negotiable in U.S. dollars.

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announced dividends with a settlement date before the record date for such dividends, causing the taxpayer to be the actual owner of the dividends on the record date. Once the right to the dividends accrued to the taxpayer, the taxpayer immediately sold the ADRs back to the counterparty with a settlement date of the transaction occurring after the record date for the dividends. The cost of the ADRs purchased by the taxpayer (with dividend rights attached) was more than the price at which the taxpayer resold the ADRs back to the counterparty, resulting in capital losses to the taxpayer. These losses were intended by the taxpayer to be carried back to previous tax years in order to offset capital gains it had incurred from sales of stock and thus to obtain a federal income tax refund from those years. The taxpayer also claimed foreign tax credits and certain deductions for interest, commissions, and foreign income tax withheld as a result of the transactions.

The district court granted the Service's motion for summary judgment and completely disregarded the transactions for tax purposes, concluding that the transactions "were shaped solely by tax avoidance considerations" and lacked practical economic effect. 84 A.F.T.R.2d at 99-6447 (Sept. 22, 1999). The court phrased the question at issue as "whether these transactions are a sham and therefore to be disregarded for tax purposes," and gave only a cursory review of the law and facts. In its Order of Summary Judgment, the district court stated that the taxpayer's only change in "economic position" as a result of the transactions was "the transfer of the claim to the foreign tax credit to IES." *Id.* The court did not consider whether the trades had a valid business purpose.

The taxpayer appealed, and the U.S. Court of Appeals for the Eighth Circuit reversed the district court, finding that the ADR trades had both economic substance and business purpose, and stating that "[t]he fact that IES took advantage of duly enacted tax laws in conducting the ADR trades does not convert the transactions into shams for tax purposes." *Id.* at 356. Further, the Eighth Circuit allowed the loss deductions and foreign tax credits claimed by the taxpayer.

In response to the Service's argument that the trades were shams because there was no risk of loss, the circuit court disagreed, stating that:

The risk may have been minimal, but that was in part because [the taxpayer] did its homework before engaging in the transactions. Company officials met twice with [the securities broker's] representatives and studied the materials provided. After that, [the taxpayer] consulted its outside accountants and its securities counsel for reassurances about the legality of the transactions and their tax consequences.

*Id.* at 355 (citation omitted). The court went on to conclude that "[w]e are not prepared to say that a transaction should be tagged a sham for tax purposes merely because it does not involve excessive risk. IES' disinclination to accept any more risk than necessary in these circumstances

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strikes us as an exercise of good business judgment consistent with a subjective intent to treat the ADR trades as money-making transactions.” *Id.*

The Eighth Circuit decision in *IES Industries* was relied upon by the Fifth Circuit in its reversal of the Tax Court decision in *Compaq Computer Corp. v. Commissioner*. See *Compaq Computer Corp. v. Comm’r*, 277 F.3d 778 (5th Cir. 2001), rev’g 113 T.C. 214 (1999). The ADR transaction at issue in *Compaq* was identical to the transaction in *IES Industries*. The Tax Court had held that Compaq’s engagement in the ADR transaction lacked economic substance and a non-tax business purpose, and therefore should be disregarded for federal income tax purposes. The Fifth Circuit in *Compaq* stated that the Tax Court’s decision was “in conflict with” the Eighth Circuit’s decision in *IES Industries*, and that as a matter of law the ADR transaction was not a sham for tax purposes. *Compaq*, 277 F.3d at 782 (outlining the Eighth Circuit’s legal analysis of economic substance and business purpose as applied to the ADR transaction).

With regard to economic substance, in addition to relying on the decision of *IES Industries* that the gross dividend (rather than the dividend net of the foreign income tax) was to be used to compute pre-tax profit, the Fifth Circuit in *Compaq* also noted that the Service was trying to “stack the deck” against Compaq when calculating its after-tax profit by failing to include the U.S. foreign tax credit which resulted from the transaction. Thus, the Tax Court’s calculation of profitability took into account the foreign income tax withheld (by reducing the amount of the dividend), but did not include the benefit of the U.S. foreign tax credit, resulting in a net loss of approximately \$1.5 million. The Fifth Circuit referred to the Tax Court’s calculation as “a curious method of calculation,” holding that:

If the effects of tax law, domestic or foreign, are to be accounted for when they subtract from a transaction’s net cash flow, tax law effects should be counted when they add to cash flow. To be consistent, the analysis should either count all tax law effects or not count any of them. To count them only when they subtract from cash flow is to stack the deck against finding the transaction profitable. During this litigation, the I.R.S. has consciously chosen to try to stack the deck this way. . . . The Commissioner, however, has provided no reason to endorse its approach . . . . That the Government would get more money from taxpayers does not suffice.

*Compaq*, 277 F.3d at 785 (footnotes and citations omitted). With regard to business purpose, the Fifth Circuit found that Compaq was not solely motivated by the tax consequences resulting from the ADR transaction, but that Compaq “actually and legitimately” also sought a pre-tax profit. *Id.* at 787.

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In another so-called “economic substance case,” the Eleventh Circuit Court of Appeals reversed the Tax Court in *United Parcel Service of America, Inc. v. Commissioner*, 254 F.3d 1014 (11th Cir. 2001), *rev’g* 78 T.C.M. (CCH) 262 (1999). In this case, the Tax Court had originally held that the taxpayer’s restructuring of its insurance program for shipping valuable packages was a sham in substance. Rather than providing insurance directly to customers for such packages, the taxpayer restructured its program so that insurance was instead provided by a foreign affiliate of the taxpayer. The Tax Court concluded that:

[[T]he taxpayer] has failed to prove that the restructuring of its [insurance program] was motivated by nontax business reasons or that the restructuring had economic substance. Rather, we find that the restructuring was done for the purpose of avoiding taxes and that the arrangement between [the parties] had no economic substance or business purpose.

78 T.C.M. (CCH) at 293 (footnote omitted).

On appeal, the circuit court held that the restructuring transaction had the requisite business purpose and economic substance necessary to be respected for tax purposes. The court reasoned that:

It may be true that there was little change over time in how the [restructured] program appeared to customers. But the tax court’s narrow notion of “business purpose” – which is admittedly implied by the phrase’s plain language – stretches the economic-substance doctrine farther than it has been stretched. A “business purpose” does not mean a reason for a transaction that is free of tax considerations. Rather, a transaction has a “business purpose,” when we are talking about a going concern like [the taxpayer], as long as it figures in a bona fide, profit-seeking business. This concept of “business purpose” is a necessary corollary to the venerable axiom that tax-planning is permissible. The Code treats lots of categories of economically similar behavior differently. For instance, two ways to infuse capital into a corporation, borrowing and sale of equity, have different tax consequences; interest is usually deductible and distributions to equityholders are not. There may be no tax-independent reason for a taxpayer to choose between these different ways of financing the business, but it does not mean that the taxpayer lacks a “business purpose.” To conclude otherwise would prohibit tax-planning.

254 F.3d at 1019 (citations omitted). The Eleventh Circuit, while noting that the restructuring transaction at issue was “sophisticated and complex,” nevertheless emphasized that “its

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sophistication does not change the fact that there was a real business that served the genuine need for customers to enjoy loss coverage and for [the taxpayer] to lower its liability exposure." *Id.* at 1020.

*Salina, IES Industries, Compaq, and United Parcel Service, supra*, all relied upon *Gregory v. Helvering*, 293 U.S. 465 (1935), for the proposition that a taxpayer is free to structure his business transactions as he sees fit, unless the "sole purpose" of the transaction in question is to reduce taxes. See *Salina* (quotation above); *IES Industries*, 253 F.3d at 355; *Compaq*, 277 F.3d at 786; *United Parcel Service*, 254 F.3d at 1019. In *Gregory v. Helvering*, the taxpayer formed a corporation for the single purpose of liquidating it to avoid paying tax on a dividend distribution. The Court found that the reorganization was "an operation having no business or corporate purpose – a mere device which put on the form of a corporate reorganization as a disguise for concealing its real character, and the sole object and accomplishment of which was the consummation of a preconceived plan." *Gregory*, 293 U.S. at 469 (emphasis added). In *Gregory*, the Court, therefore, concluded that "the facts speak for themselves and are susceptible of but one interpretation," that "[t]he whole undertaking . . . was in fact an elaborate and devious form of conveyance masquerading as a corporate reorganization, and nothing else." *Id.* at 470.

While the matter is not free from doubt, the facts involved herein are distinguishable from those in *Gregory v. Helvering*. We understand that the intention of Barnville in purchasing the stocks comprising the Portfolio and contributing such Portfolio to TTP was primarily for the business purposes discussed above. In addition, joining together with Euran in the venture allowed Barnville to obtain management consulting services with regard to the Portfolio. We also understand that TAC and CS purchased their TTP membership interests from Barnville and Euran for profit purposes independent of any tax benefit. As discussed earlier, HS believed that the recent stock market decline presented a ripe opportunity for investing, particularly in the technology sector, with a significant profit potential. Once TAC and CS owned their membership interests in TTP, the Collar was entered into to minimize the risk associated with holding the Portfolio. Thus, unlike Mrs. Gregory in *Gregory v. Helvering*, the sole purpose for TAC and CS acquiring interests in TTP and TTP entering into the Collar was not merely to avoid taxes. Thus, while *Gregory v. Helvering* is an instructive case on this issue, it should not necessarily control the relevant Federal income tax consequences in connection with the TTP Losses in this instance.

In general, as in *IES Industries, Compaq, and United Parcel Service*, the cases have held that a transaction will be respected for tax purposes if it has "economic substance which is compelled or encouraged by business or regulatory realities, is imbued with tax-independent considerations, and is not shaped solely by tax-avoidance features that have meaningless labels attached." *James v. Comm'r*, 899 F.2d 905, 908 (10th Cir. 1990) (quoting *Frank Lyon Co. v. United States*, 435 U.S. 561, 583-84 (1978)). A key factor in assessing the economic substance of a transaction is whether the transaction has any practical economic effect other than the creation of tax losses. Courts have refused to recognize the tax consequences of a transaction that does not appreciably affect the taxpayer's beneficial interest except to reduce tax.

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The presence of an insignificant pre-tax profit is not enough to provide a transaction with sufficient economic substance to be respected for tax purposes. See *Knetsch v. United States*, 364 U.S. 361, 366 (1960); *ACM* 157 F.3d at 248; *Sheldon v. Comm'r*, 94 T.C. 738, 768-69 (1990).

In another case, *ASA Investorings Partnership v. Commissioner*, 76 T.C.M. (CCH) 325 (1998), *aff'd*, 201 F.3d 505 (D.C. Cir. 2000), *cert. denied*, 121 S. Ct. 171 (2000), the Tax Court analyzed whether a valid partnership was actually formed at the outset. The transactions in this case were entered into to take advantage of the contingent installment sales rules, and were found by the Tax Court to be structured to minimize the partnership's exposure to risk and for the sole purpose of generating tax losses. In affirming the Tax Court, the D.C. Circuit in *ASA* held that none of the purported partners in that case had the intent to form a real partnership – “[a] partner whose risks are all insured at the expense of another partner hardly fits within the traditional notion of partnership.” 201 F.3d at 515. Consequently, the circuit court did not even reach the economic substance issue.

In the case of *Boca Investorings Partnership v. United States*, *supra*, on the other hand, the District Court for the District of Columbia, in contrast with the Court of Appeals for the D.C. Circuit in *ASA*, held that the creation of and investment in the partnership at issue, and the transactions entered into by such partnership, in fact, had economic substance because the partner involved had a non-tax business purpose, specifically, to make investments that would generate a profit. *Boca* involved the same tax structure which had been developed by Merrill Lynch subsequently challenged by the Service, and finally litigated in *ASA*, *ACM*, and *Saba Partnership*, T.C. Memo. 1999-359, *vacated and remanded*, 273 F.3d 1135 (D.C. Cir. 2001), all cases in which the courts denied the claimed tax benefits (as discussed above). Unlike the Tax Court, the court in *Boca* seemed impressed by the factual record surrounding the creation of the partnership and the purposes for engaging in the transactions at issue, and at one point noted that “the facts as found by this Court from the evidence at trial in this case are materially different from the facts in *ASA* recently decided by the Tax Court and affirmed by the D.C. Circuit – a case defendant argues is strikingly similar to this one, but which in fact is quite different.” *Id.* at 381 (discussing how the crucial facts in *ASA*, which caused the Tax Court to disregard the partnership in that case, were not present in *Boca*).

With respect to the issue of whether the transactions in *Boca* had economic substance, the district court looked to a test set forth by the D.C. Circuit in *Horn v. Commissioner*, 968 F.2d 1229 (D.C. Cir. 1992). The court in *Horn* provided a test for determining whether a transaction should be treated as a sham for tax purposes, holding:

To treat a transaction as a sham, the court must find (1) that the taxpayer was motivated by no business purpose other than obtaining tax benefits in entering the transaction, and (2) that the transaction has no economic substance because no reasonable possibility of profit exists.

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*Horn*, 968 F.2d at 1237 (quoted by *Boca*). Interpreting this test set forth in *Horn*, the court in *Boca* held that:

The decision in *Horn* also makes plain that a transaction is not a sham and will be recognized for tax purposes if the taxpayer satisfies *either* part of the test for economic substance -- if either (1) using a subjective analysis, the transaction has a nontax business purpose, *or* (2) using an objective analysis, the transaction has a reasonable possibility of generating a profit, *ex ante*. *Horn v. Commissioner*, 968 F.2d at 1237-38. The D.C. Circuit expressly recognized that "a transaction undertaken for a nontax business purpose will not be considered an economic sham *even if* there was no objectively reasonable possibility that the transaction would produce profits." *Id.* at 1239 (emphasis in original). By the same token, a transaction that has economic consequences other than tax benefits will not be disregarded even if it was motivated by tax considerations. Both factors are considered in applying the traditional sham transaction test, but the transaction will be recognized if either is satisfied. *Horn v. Commissioner*, 968 F.2d at 1237 ("a transaction will not be considered a sham if it is undertaken for profit or for other legitimate nontax business purposes").

*Boca*, 167 F. Supp. 2d at 376-77 (emphasis in original) (some citations omitted).

Applying the test in *Horn*, the court in *Boca* held that the transactions satisfied both prongs of the test, even though only one prong need have been met. First, the court held that the plaintiffs had established by a "preponderance of the evidence" that the transactions had a non-tax business purpose, namely to make a profit. The evidence showed that the partner at issue had engaged in pre-transaction due diligence in order to evaluate the credit quality, risk profile, and rate of return of potential investments, and had picked investments that the partner thought could make a profit. Each proposed transaction was evaluated separately, and according to the court, "[w]hile potential tax benefits were considered by [the partner], it was understood that [the partner] was not committing to engage in all of the transactions necessary under the Merrill Lynch presentation in order to give rise to a tax loss." *Id.* at 378. The record showed that the partner would not have invested in the partnership if the partner did not think that the partnership's investments would be profitable.

In addition, in finding that the second prong also had been met, the court in *Boca* found that "the great weight of evidence" supported the plaintiffs' position that the transactions at issue had a reasonable possibility of turning a profit. The potential for profitability resulted in the partnership's holding of private placement notes ("PPNs") and contingent installment payment agreements ("LIBOR Notes"). The LIBOR Notes were sensitive to fluctuations in

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interest rates, and due to the real possibility of movements in interest rates, there existed a significant possibility for the holder of the LIBOR Notes to either make or lose a substantial amount of money. Because of this, the court held that there was a "reasonable prospect for profit." *Id.* at 380.

Similarly, in *IES*, the Eighth Circuit held that the transactions at issue did in fact have economic substance because the economic benefit to the taxpayer was the amount of the gross dividend received by the taxpayer, before foreign taxes were withheld, rather than the net dividend received as argued by the Service. Despite the fact that the taxpayer actually only received 85% of the dividend in cash once the foreign tax was withheld, the taxpayer for U.S. Federal income tax purposes was treated as having received 100% of the dividend and the taxpayer would be liable for U.S. income taxes on 100% of the dividend. The court thus held that "[b]ecause the entire amount of the ADR dividends was income to [the taxpayer], the ADR transactions resulted in a profit, an economic benefit to [the taxpayer]." 253 F.3d at 354. *See also Compaq.*

In addition, in the case of *United Parcel Service of America, Inc. v. Commissioner*, *supra*, (discussed above), the Eleventh Circuit, in reversing the Tax Court, held that the restructuring transaction at issue had sufficient "economic effects" to warrant respect for tax purposes. The court noted that the newly structured insurance program resulted in (i) the creation of genuine obligations of the taxpayer enforceable by an unrelated party, and (ii) the loss by the taxpayer of a stream of income from customer fees. Therefore, the Eleventh Circuit determined that "[t]here were . . . real economic effects from this transaction on all of its parties," and that because the transaction had real economic effect and a business purpose, it "had sufficient economic substance to merit respect in taxation." 254 F.3d at 1020.

In the instant situation, the Service could attempt to apply the economic substance doctrine to disregard TTP. In order to apply this doctrine to disregard TTP, however, the Service would be required to show: (1) when Barnville and Euram contributed the Portfolio and management consulting services to the TTP, respectively, and when TAC and CS subsequently purchased the TTP interests and caused TTP to enter into the Collar, there was no significant potential for pre-tax profit (an objective test), and (2) that Barnville and Euram, and subsequently TAC and CS, utilized TTP for no valid business purpose other than to obtain tax benefits (a subjective test). The formation and use of TTP should be viewed as distinguishable from the discussed herein cases because, among other things, at the time of its formation and acquisition of the Portfolio and the Collar it offered "a reasonable opportunity for profit exclusive of tax benefits." *Salina*, 80 T.C.M. (CCH) at 694 (citation omitted). Here, at the time of the contribution of the Portfolio and investment management services to TTP and the subsequent sale of the TTP interests and the execution of the Collar, unlike *Gregory v. Helvering*, 293 U.S. 465 (1935), and the other cases discussed above, the TTP members expected to realize a short-term, pre-tax profit on owning an interest in TTP, even taking into account transaction costs. In addition, as discussed above, TTP was formed for investment purposes independent of tax benefits. Barnville's partnership with Euram in TTP allowed Barnville to obtain the benefits of

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Euram's management consulting service. Once TAC and CS purchased their membership interests in TTP, the limited liability structure of TTP provided TAC and CS a possible additional layer of protection from unforeseen creditors, and presented HS with an additional investment entity for his future investments. As stated in *IES Industries*, "[a] taxpayer's subjective intent to avoid taxes thus will not by itself determine whether there was a business purpose to a transaction." 253 F.3d at 355 (emphasis added).

### 3. Activities Engaged in For Profit

Section 165(c)(2) limits an individual's deduction of losses that do not arise from a business, casualty or theft to those "incurred in any transaction entered into for profit." What matters under section 165(c)(2) is a taxpayer's subjective motive for entering into the transaction, as indicated by the objective facts and circumstances. In the case of a partnership, profit motive is determined at the partnership level based on the actions of those who manage the partnership's affairs. See *Fox v. Comm'r*, 80 T.C. 972, 1006 (1983) (citing *Hager v. Comm'r*, 76 T.C. 759, 784 (1981)); *Andros v. Comm'r*, 71 T.C.M. (CCH) 2472 (1996).

Notwithstanding the literal language of section 165(c)(2), some courts have required that the taxpayer's profit motive be the "primary" motive for entering into a transaction. The "primary" concept is derived from a footnote in *Helvering v. National Grocery Co.*, 304 U.S. 282, 289 n.5, *reh'g denied*, 305 U.S. 669 (1938), where the U.S. Supreme Court, in giving examples where the taxpayer's state of mind determined the incidence of income tax, stated that under the 1939 Internal Revenue Code predecessor of section 165(a)(2), the deductibility of losses may depend on whether the taxpayer's motive in entering the transaction was "primarily" profit.

Cases that appear to require the primary profit motive, without specifically finding that the taxpayer had a profit motive whatsoever, do so in circumstances where, for the most part, the taxpayer's conduct is inconsistent with a profit motive. For example, in *Keeler v. Commissioner*, 243 F.3d 1212 (10th Cir. 2001), the court focused on the facts that the taxpayer continued trading even while he and every other non-insider were losing money on the bulk of their transactions; his losses offset all but 3% of his income over a two-year period; he left a large balance in his margin account "making net profit on his [trading] activities all but impossible;" and he continued trading even though it was clear that prices and participation on the market were fixed, exiting the program only when Congress eliminated its tax benefits in 1984. See also *Seykota v. Comm'r*, 61 T.C.M. (CCH) 2706 (1991), *suppl.* 62 T.C.M. (CCH) 1116 (1991). Moreover, the court distinguished cases such as *Laureys v. Commissioner*, 92 T.C. 101 (1989), where "the trading at issue occurred on established markets and was part of taxpayers' overall profit-motivated strategy to hedge their investments." 243 F.3d at 1219. In addition, as in cases such as *Ewing v. Commissioner*, 91 T.C. 396, 419 (1988), *aff'd in unpub. opinion*, 940 F.2d 1534 (9th Cir. 1991), a factor was that the trades were closed out in a noncommercial manner designed to maximize tax benefits, and required a higher commission. See 243 F.3d at 1215-16.

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The word "primary" does not appear in section 165(c)(2). As the Seventh Circuit observed in a similar case, "we find no basis therein for our undertaking to put words into the statute that, whatever the reasons may have been, Congress did not put there. Our task is to construe and apply, not to write, legislation." *International Trading Co. v. Comm'r*, 484 F.2d 707, 711 (7th Cir. 1973). We believe that an appellate court faced with the issue of whether a primary tax avoidance motive prevents a taxpayer with some bona fide non-tax profit motive from deducting a loss could hold that it does not. Moreover, to the extent the "primary" gloss applies to transactions in which a tax motive is a factor, we believe that courts likely would apply it only where, for the part, the taxpayer acts inconsistently with any profit motive.

In this instance, TTP held the Portfolio and the Collar solely for investment purposes with the intent to realize a pre-tax profit. We have also been advised that some of the stocks in the Portfolio were dividend paying stocks, and that some of the stocks in the Portfolio did produce a profit upon their sale. In addition, TTP entered into the Collar for purposes of hedging the risks associated with holding the Portfolio while retaining some of the profit potential in the Portfolio. Consequently, based on the above, the requisite profit motive would likely exist so that limitations on deductions under section 165(c)(2) would not apply to limit deductions resulting from the TTP Losses.

#### 4. Limitations under Sections 267(a)(1) and 707(b)(1)

Section 267(a)(1) disallows deductions which result from losses on the sale or exchange of property if made directly or indirectly between certain related persons. Section 267(b) lists the persons intended to be covered under this disallowance rule, including certain members of a family, an individual and a controlled corporation, two corporations which are members of the same controlled group, a grantor and a fiduciary of any trust, and an S corporation and another S corporation or C corporation if the same persons own more than 50% in value of the outstanding stock of each corporation. In the instant case, all of the sales of the Portfolio and the termination of the Collar were made by TTP in the public market and thus presumed not with a person having a relationship with TTP specified in section 267(b). Thus, section 267(a) should not apply to disallow any deductions resulting from the TTP Losses.

Section 707(b)(1) similarly disallows deductions resulting from losses incurred on the sale or exchange of property (other than a partnership interest) between either (i) a person and a partnership if that person owns, directly or indirectly, more than 50% of the capital or profits interest in such partnership, or (ii) two partnerships in which the same persons own, directly or indirectly, more than 50% of the capital or profits interests in such partnerships. We understand that TTP did not sell any of the Portfolio nor terminate the Collar with a person who owned more than 50% of the TTP interests, or to another partnership which was owned by a person who owned more than 50% of both TTP and that partnership. Therefore, section 707(b)(1) should also not apply to disallow deductions resulting from the TTP Losses.

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#### IV. THE TTP LOSSES ARE CAPITAL LOSSES

Under section 1001(a), a taxpayer recognizes gain or loss from the sale or exchange of an asset equal to the difference between the taxpayer's adjusted basis in the asset and the amount realized from the sale or exchange of such asset. If the asset is a capital asset within the meaning of section 1221, the gain or loss is capital gain or loss, of a long-term or short-term nature generally depending on the taxpayer's holding period for the asset. Section 1234A provides, in relevant part, that gain or loss attributable to the cancellation, lapse, expiration or other termination (*i.e.*, other than through a sale or exchange) of a right or obligation with respect to property which is (or if acquired would be) a capital asset in the taxpayer's hands shall be treated as gain or loss from the sale of a capital asset.

Under section 1234(a)(1), gain or loss attributable to the sale or exchange of, or loss attributable to the failure to exercise, an option in the hand of the purchaser of that option has the same character as the underlying property would have if owned by the purchaser. Treas. Reg. section 1.1234-1(a)(1) states that gain or loss from the sale or exchange of an option that is a capital asset in the hands of the taxpayer holder of the option is considered gain or loss from the sale or exchange of a capital asset, and the period for which the taxpayer has held the option determines whether the gain or loss is short-term or long-term.

##### A. The Portfolio

Because the Portfolio was comprised of capital assets at the time it was sold by TTP, TTP incurred an overall loss with respect to the Portfolio in November 2001. The loss is a capital loss for Federal income tax purposes and is a long-term capital loss to the extent TTP held the particular stock of the Portfolio longer than a year, and a short-term capital loss to the extent the stock of the Portfolio sold at a loss was held less than a year. For a breakdown of the losses among the stocks comprising the Portfolio, see Exhibit A attached hereto supplied to us as part of the books and records of TTP and verified by Quellos as accurate.<sup>37</sup>

##### B. The Collar

The termination of the Collar by TTP should be treated as a sale of capital assets for U.S. Federal income tax purposes. Code sections 1234(a) and 1234(b)(2). Thus, it is likely that the losses recognized by TTP from the closing out of the Collar in November 2001 should be considered capital losses.

Under section 1234(b), gain or loss to the grantor from a "closing transaction" with respect to, and gain on lapse of, an option on "property" is short-term capital gain or loss.

<sup>37</sup> We note that we have not been asked nor have we undertaken independently ourselves to verify the accurateness of the numbers supplied to us with respect to the amount of loss realized on its sale of the Portfolio in November 2001.



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Section 1234(b)(2)(A) defines a "closing transaction" as the termination of the taxpayer's obligation under an option other than through exercise or lapse. Section 1234(b)(2)(B) defines "property" as stock, securities, commodities and commodity futures. Section 1234(b) does not apply to options granted in the ordinary course of the taxpayer's trade or business of granting options. Section 1234(b)(3).

The Calls that TTP granted were options to purchase the stocks contained in the Portfolio, and thus were "property" as defined in section 1234(b)(2)(B). We also understand that TTP's obligations under the Calls were not terminated through exercise or lapse, therefore, TTP's termination of its obligations under the Calls constituted a "closing transaction" under section 1234(b)(2)(A). In addition, TTP was not engaged in the trade or business of granting options, therefore, the losses incurred by TTP from granting, and terminating, the obligations under the Calls should be treated as capital losses.

Accordingly, the TTP Losses should be capital losses for U.S. Federal income tax purposes.

V. **SECTION 704(d) LIMITATION AND THE ADJUSTED BASES OF THE PARTNERSHIP INTERESTS IN TTP**

Under section 704(d), a partner may deduct his distributive share of partnership losses, including capital losses, only to the extent of the adjusted basis of his partnership interest at the end of the partnership year in which the losses occurred. In determining the adjusted basis of a partner's interest for purposes of the section 704(d) loss limitation, the adjusted basis of a partner's interest will include the cost of acquiring the interest plus the contributions made to the partnership, increased by the taxable income of the partnership and decreased by distributions and losses of the partnership other than current year losses. *See* sections 705(a), 742, 722; Treas. Reg. section 1.704-1(d)(2).

A. **Bases in TTP Interests Purchased by TAC and CS**

Under section 742, the basis of a partner's interest not acquired by contribution is governed by the regular cost basis rules. *See* section 1011 et seq. Thus, the basis of a partnership interest acquired by purchase is the cost of such interest paid by the transferee partner.

As described above, on September 24, 2001, TAC purchased Barnville's 99% membership interest in TTP for \$768,784,235, and CS purchased Euram's 1% membership interest in TTP for \$7,765,497. We understand that TAC and CS acquired these TTP interests for bona fide non-tax business purposes, and that their purchases were consummated with unrelated sellers (*i.e.*, Barnville and Euram) with their respective purchase prices being paid entirely in cash. Under section 742, therefore, the amounts paid by TAC and CS to Barnville and Euram, respectively, should be included in their respective adjusted bases for their interests in

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TTP at the close of TTP's taxable year ending December 31, 2001 with respect to TAC, and taxable year ending October 18, 2001 with respect to CS.

**B. Increase in Bases of TTP Interests due to TAC and CS Contributions**

The basis of a partner's interest in a partnership is increased by the amount of money or the adjusted basis of property contributed to the partnership by the partner. Section 722.

On September 24, 2001, TAC and CS made cash contributions of \$31,208,373 and \$315,236, respectively, to TTP. We understand that such contributions were bona fide contributions to the capital of TTP, and that TAC's and CS' payments were in proportion to their interests in TTP. Thus, the amounts of cash contributed by TAC and CS to TTP should be included in their adjusted bases in TTP at the close of TTP's taxable year ending December 31, 2001 with respect to TAC, and taxable year ending October 18, 2001 with respect to CS.

In addition, on October 22, 2001, after CS transferred her 1% TTP interest to Glen Gale as described above, TAC and Glen Gale each transferred Class B common shares of FFWW stock to TTP as capital contributions. We understand that these transfers were bona fide contributions to the TTP's capital, and that such contributions were in proportion to TAC's and Glen Gale's interests in TTP. Thus, under section 722, TAC's and Glen Gale's bases in TTP should be increased by the amount of their respective adjusted bases in their FFWW stock at the time of the contributions.

**C. Adjustment to Bases of TTP Interests from Sale of FFWW Stock**

Section 705(a)(1)(A) provides that a partner's basis in his partnership interest is increased by his distributive share of taxable income of the partnership for the current taxable year and prior taxable years as determined under section 703(a). According to section 703(a), a partnership generally computes its taxable income in the same manner as an individual, except that a partnership is required to state separately the classes of income and deductions as set forth in section 702(a), including capital gains and losses. These section 702(a) items are passed directly through to the partnership's partners who take their distributive share of such items into account for tax purposes.

The sale of the FFWW stock held by TTP took place on October 24, 2001, thus, any gain recognized by TTP from such sale was recognized in TTP's taxable year beginning October 1, 2001 and ending December 31, 2001. Accordingly, under section 705(a)(1)(A), the amount of gain recognized by TTP from the sale of its FFWW stock and allocated to each TTP member should be taken into account in determining such member's adjusted basis in TTP at the close of TTP's taxable year ending December 31, 2001. See sections 702(a) and 703(a).

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**D. Built-In Losses in Portfolio are Allocable to TAC**

Under section 704(c)(1)(A), a partnership's income, gain, loss, and deduction with respect to property contributed by a partner to a partnership must be allocated among the partners in a manner which takes into account the difference between the fair market value of the property and its basis in the partnership's hands at the time of the contribution. According to the Regulations, the purpose of section 704(c) is to prevent partners from shifting tax consequences with respect to unrealized gain or loss on property to other partners by contributing the property to the partnership – thus, any allocations made in accordance with section 704(c)(1)(A) must be made using a reasonable method that is consistent with such purpose. Treas. Reg. section 1.704-3(a)(1). In addition, an anti-abuse rule is contained in Treas. Reg. section 1.704-3(a)(10) which provides that an allocation method or combination of methods is not reasonable if a contribution of property and an allocation of tax items are made with the intention of shifting the tax consequences of built-in gain or loss among the partners in a manner that substantially reduces the present value of the partners' tax liability.

Treas. Reg. section 1.704-3 provides methods of allocation that are considered "generally reasonable" that a partnership may use for allocating income, gain, loss, and deduction among partners in a manner that takes into account any built-in gain or loss in contributed property. Under the "traditional method" of allocation, a partner who contributes "section 704(c) property" to a partnership is allocated any built-in gain or loss when such contributed property is sold or otherwise disposed of in a recognition transaction. Treas. Reg. section 1.704-3(b)(1). "Section 704(c) property" means property that has a book value which differs from the contributing partner's adjusted tax basis at the time of contribution. Treas. Reg. section 1.704-3(a)(3)(i). For purposes of these rules, if a contributing partner subsequently transfers his partnership interest, built-in gain or loss from the contributed property must be allocated to the transferee partner as it would have been allocated to the transferor partner. Treas. Reg. section 1.704-3(a)(7).

As discussed above, Barnville was the contributing partner of the Portfolio to TTP, therefore, Barnville would have been allocated all of the built-in losses in the Portfolio upon their sale in November of 2001. However, since TAC purchased Barnville's entire 99% interest in TTP on September 24, 2001, the aggregate losses recognized on the sale of the Portfolio are allocable to TAC in the same manner as they would have been allocated to Barnville. See Treas. Reg. section 1.704-3(a)(7).

**VI. SECTIONS 382 AND 383 DO NOT APPLY TO LIMIT THE TAXABLE INCOME THAT MUST BE OFFSET BY THE TTP LOSSES**

Generally, under sections 382 and 383, special limitations apply to built-in losses, capital loss carryforwards, net operating loss carryforwards and certain excess credits when a corporation undergoes a stock ownership change of more than fifty percentage points within a three year period. The limitation under section 382 is designed to limit a corporation's use of

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certain built-in losses, capital losses and net operating losses recognized by a loss corporation after an ownership change. This "section 382 limitation" is used to determine the corporation's section 383 credit limitation on its use of excess foreign taxes, general business credits and unused minimum tax credits.

The general rule under section 382(a) provides that "the amount of the taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed the section 382 limitation for such year." Thus, in order for a corporation to be subject to this limitation there must have been an "ownership change" of a "loss corporation." According to section 382(g)(1), an ownership change occurs if one or more 5% shareholders of a loss corporation increased their ownership of stock by more than fifty percentage points over the lowest percentage of stock owned by such shareholders during a three-year testing period. A "loss corporation" is defined by section 382(k)(1) as "a corporation entitled to use a net operating loss carryover or having a net operating loss for the taxable year in which the ownership change occurs," and includes "any corporation with a net unrealized built-in loss."

Neither section 382 nor section 383 should apply to limit the use of the TTP Losses to offset the taxable income of TTP, HS, CS, or TAC. First, both HS and CS are individuals, not corporations under Treas. Reg. section 301.7701-2(b) nor "eligible entities" under Treas. Reg. section 301.7701-3(b), therefore, they cannot be subject to the limitations under sections 382 and 383. In addition, TTP has been a Delaware limited liability company since its formation and has not at any time elected under Treas. Reg. section 301.7701-3(c) to be taxed as a corporation for Federal income tax purposes. Thus, TTP also should not be limited under sections 382 or 383 in the amount of taxable income that it may offset by the TTP Losses.

While the Service may attempt to argue that TAC should be subject to the section 382 limitations described above, however, we believe that the Service would fail in such an assertion. There has not been an ownership change of TAC for purposes of section 382(g) due to the constructive ownership rules of section 382(l)(3). Section 382(l)(3)(A) applies the attribution rules of section 318 in determining the ownership of stock in a loss corporation, which in turn is a factor in determining whether or not a change in ownership of a loss corporation has occurred. Under the constructive ownership rules, shares of stock in a loss corporation owned by members of a family are aggregated and treated as though they are owned by one individual. Section 382(l)(3)(A)(i). In addition, an entity owning shares of stock in a loss corporation is ignored so that the stock is deemed to be proportionately owned by such entity's owners. Section 382(l)(3)(A)(ii). For example, stock in a loss corporation that is owned by a partnership is deemed to be proportionately owned by the partners of such partnership. In this case, HS and CS should be treated as constructively owning over 90% of the TAC Stock prior to the TAC Transfers because they collectively owned over 90% of the partnership interests in Silverlight, and Silverlight owned 100% of the TAC Stock. After the TAC Transfers, HS and CS collectively owned 100% of the TAC Stock. Thus, because HS' and CS' ownership of TAC

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Stock increased only about ten percentage points after the TAC Transfers, no change in ownership of TAC within the meaning of section 382(g)(1) has occurred.

Accordingly, neither section 382 nor section 383 should apply to limit the use of the TTP Losses to offset the taxable income of TTP, HS, CS, or TAC.

## VII. THE AT-RISK RULES

Generally, the "at risk" provisions of section 465 limit the current deduction of losses attributable to certain activities to the extent those losses exceed the taxpayer's "amount at risk" in the "activity." Furthermore, the "at risk" rules apply directly to individuals and to certain closely held C corporations and to individuals in their capacities as partners in a partnership or as shareholders in an S corporation.<sup>38/</sup>

Section 465(c)(3)(A) provides that the "at risk" rules apply to any activity engaged in by the taxpayer in carrying on a trade or business or for the production of income. Whether a taxpayer is "at risk" is determined on the basis of facts as of the close of the taxable year. See Prop. Treas. Reg. section 1.465-1(a). The determination of the amount with respect to which the taxpayer is "at risk" in cases where the activity is engaged in by an entity separate from the taxpayer is made as of the close of the taxable year of the entity unless otherwise stated. Since TAC elected to be treated as an S corporation effective for all periods after October 1, 2001, HS will be subject to the "at risk" rules with respect to his ownership in TAC for the tax year ending December 31, 2001.

### A. HS' "Amount at Risk" Equal to the Proceeds of FFWW Stock Held for Use in TTP Activity

Generally, the "at risk" rules apply to each activity engaged in by the taxpayer in carrying on a trade or business or for the production of income. In applying the "at risk" rules, a two-step analysis is required. The scope of an activity must first be defined, and then it must be determined whether separate activities should be aggregated or segregated for purposes of applying the "at risk" rules. The Proposed Regulations under section 465 provide only limited guidance regarding how to determine the scope of the activities in which a taxpayer is engaged. Consequently, if two activities are interrelated, it is not clear whether for at risk purposes there are two activities or only one.

Although neither a partnership nor an S corporation is itself subject to the "at risk" rules, the nature of any activity involving a partner or an S corporation shareholder is determined respectively at the partnership or S corporation level. As a result, HS is considered

<sup>38/</sup> When originally enacted, the "at risk" rules applied both to S corporations and to their shareholders. However, these rules were repealed with respect to S corporations as part of the Subchapter S Revision Act of 1982, P.L. 97-354, 5(a)(31), 1982-2 C.B. 702, 715 rendering Treas. Reg. sections 1.465-10(a), (b) inapplicable.

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to engage in an activity with respect to investments made by TAC through TTP for the production of income.

Section 465(c)(3) provides that, with respect to carrying on a trade or business, if a taxpayer actively participates in the management of such trade or business, then all activities comprising the trade or business are aggregated for purposes of the "at risk" rules. *See* section 465(c)(3)(B). However, corresponding rules for the production of income do not exist. In addition, section 465(c)(3)(C) provides that activities are aggregated or alternatively treated as separate activities as Treasury prescribes by Regulations. To date no such Regulations have been proposed or adopted.

The legislative history of the amendment of section 465 by the Revenue Act of 1978 indicates that Regulations, when adopted, may provide for the aggregation of related activities for the production of income that do not have tax shelter characteristics. *See* H.R. Rep. No. 95-1445, at 68-70 (1978). The legislative history further provides that where one or more of the activities have tax shelter characteristics, the Regulations may require that such activities be treated as separate activities.<sup>39</sup> Conversely, under the passive activity rules, all "portfolio income" is treated as not subject to the limitations of section 469, thus falling into a single activity. Furthermore, these rules adopt a "facts and circumstances" test to determine what activities covered by the rules should be aggregated. *See* Treas. Reg. section 1.469-4(c)(1). It has been suggested that for purposes of simplicity and administrative ease, the term "activity" for the "at risk" rules adopt the same definition as applies to the passive activity loss rules, to the extent possible given the technical differences in the statutes. *See* Harilee, *Tax Management Portfolio, At-Risk Rules*, No. 550, at A-12.

Furthermore, where property is contributed to an activity, the taxpayer's "amount at risk" with respect to such activity is increased by the adjusted basis of the contributed property, except where (i) the taxpayer has purchased such property with borrowed funds for which such taxpayer is not personally liable, or (ii) such amounts are protected against loss through nonrecourse financing, guarantees, stop loss agreements or other similar arrangements. *See* respectively sections 465(b)(2), (4). Prop. Treas. Reg. section 1.465-22(c) provides that a taxpayer's amount "at risk" with respect to an activity is increased by the amount of the taxpayer's share of all items of income received or accrued from the activity during the taxable year over the taxpayer's share of allowable deductions allocable to the activity. However, the "amount at risk" will be reduced by amounts of money withdrawn from such activity. *See* Prop. Treas. Reg. section 1.465-22(c).

<sup>39</sup> At least one commentator, however, states that such legislative history "no longer makes much sense" in view of subsequent developments, in particular the enactment of the passive activity loss rules, discussed below. *See* Harilee, *Tax Management Portfolio, At-Risk Rules*, No. 550, at A-10. We note that the legislative history does provide, however, that in the absence of Regulations permitting or requiring aggregation it is anticipated that each investment which is not part of a trade or business will be treated as a separate activity, and separate investments will not be aggregated.

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In the absence of Regulations, it is not entirely clear whether the holding of the FFWW stock would be treated as part of the TTP Activity (the holding of the Portfolio) or as a separate activity. If the holding of the FFWW stock were treated as part of the TTP Activity, then upon contribution of the FFWW stock by HS to TAC (then to TTP), then HS would increase his "amount at risk" with respect to his interest in TAC by the adjusted basis in the FFWW stock contributed.<sup>40/</sup> Furthermore, upon the sale of the FFWW stock by TTP, the gain recognized would be treated as income from the TTP Activity and would increase HS' "amounts at risk" with respect to such activity to the extent that such amounts continued to be held in the TTP Activity.<sup>41/</sup>

**B. Amount HS Was "At Risk" on December 31, 2001 for TTP Activity under Section 465 Was Increased by the Equalization Payment**

HS paid to Silverlight the Equalization Payment to compensate Silverlight for the amount (i.e., the stock of TAC) which he received in complete redemption of his partnership interest, but which exceeded the value of his Silverlight interest redeemed. The Equalization Payment will likely be treated as a purchase by HS of an interest in TAC to the extent that the value of his TAC interest received in redemption from Silverlight exceeded the value of his interest in Silverlight.

Generally, the purchase of an interest in an activity is treated as a contribution to such activity. See Treas. Reg. section 1.465-22(d). Thus, HS' "amount at risk" with respect to his holding in TAC should be increased by his Equalization Payment.

<sup>40/</sup> We understand that HS did not purchase his shares of FFWW stock with borrowed funds, and that the value of the FFWW stock was not protected against risk of loss within the meaning of section 465(b)(4).

<sup>41/</sup> Alternatively, if the holding of the FFWW stock were viewed as an activity separate and apart from the TTP Activity (the "Hypothetical FFWW Activity"), the sale of the FFWW stock would be considered a dissolution of the Hypothetical FFWW Activity. It is our understanding that the proceeds from the sale of the FFWW stock have remained in TTP and have been used and invested in stocks and securities as part of the TTP Activity. If HS held the FFWW stock in his individual capacity at the time of sale, and upon the sale of such stock contributed the proceeds to the TTP Activity, the amount of such contribution would have increased his "amount at risk" with respect to the TTP Activity. The result should not be different where, upon the liquidation of the Hypothetical FFWW Activity, HS left the proceeds of the sale of the FFWW stock in TTP for use in the TTP Activity. Thus, although not free from doubt, if the holding of the FFWW stock is not aggregated with the TTP Activity, to the extent that the proceeds of the sale remain in TTP for use in the TTP Activity, HS should be deemed to have contributed such proceeds to the TTP Activity and should therefore have an "amount at risk" equal to the proceeds of the sale of the FFWW stock. Cf. Technical Advice Memorandum 8752006, 1987 PRL Lexis 1244 (shareholder officer of an S corporation was deemed to make a contribution to the capital of the corporation equal to the adjusted basis of the stock received as compensation from the corporation and such amounts increased such shareholder's "amount at risk" with respect to his holdings in the corporation).

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#### VIII. THE PASSIVE ACTIVITY LOSS RULES

The passive activity loss rules of section 469 limit losses from certain activities in which a taxpayer does not materially participate. The aggregate amount of deductions disallowed for the taxable year under section 469 is generally equal to a net amount designated as the "passive activity loss." Section 469(a)(1)(A). Section 469(c)(1) defines a "passive activity" as any activity that involves the conduct of any "trade or business" in which the taxpayer does not materially participate. Treas. Reg. section 1.469-4(b)(1)(i) provides that the term "trade or business activity" includes any activity that involves the conduct of a trade or business within the meaning of section 162.

With respect to partnerships, the character of each item of gross income and deduction for purposes of section 469 is determined by reference to the participation of the partner in the activity (or activities) that generated such item. See Treas. Reg. section 1.469-2T(e)(1). Thus, the passive loss rules are applied at the partner level rather than the partnership level, with separate determinations being made for each partner. As a general rule, a limited partner is treated as not materially participating in activities conducted by the partnership in which he holds such interest. Section 469(h)(2).

In determining the income or loss from a passive activity, "portfolio income" (along with certain expenses related to its production) is not taken into account. Portfolio income is treated as derived from a nonpassive activity. Portfolio income generally consists of gross income from interest, dividends, annuities, or royalties not derived in the ordinary course of a trade or business, and gain or loss not derived in the ordinary course of a trade or business attributable to the disposition of property that produces the above described income (*i.e.*, interest, dividends, annuities, and royalties) or that is held for investment. Section 469(e)(1)(A); Treas. Reg. section 1.469-2T(c)(3)(i). Thus, even if an activity is typically treated as passive (*e.g.*, because the taxpayer is a limited partner in a partnership), the portfolio income generated from the activity will not be taken into account in determining passive activity income.

For purposes of the current analysis, it is likely that section 469 would not apply to disallow any deductions derived from the TTP Losses. We understand that TTP's ownership and sale of the Portfolio, as well as its acquisition and termination of the Collar, did not constitute trade or business activities as defined in the Regulations under section 469. Thus, none of the TTP Losses were derived in the ordinary course of a trade or business. In addition, because the stocks in the Portfolio and the Collar were either dividend-producing property or property held for investment within the meaning of section 469(e)(1)(A)(ii), the disposition of the Portfolio and Collar and resultant TTP Losses should not be taken into account in determining passive activity loss.

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**IX. "CARRYOVER" UNDER SECTION 1371(b)(1)**

Section 1371(b)(1) provides that "no carryforward, and no carryback, arising for a taxable year for which a corporation is a C corporation may be carried to a taxable year for which such corporation is an S corporation." This rule is intended to prevent losses and credits that a C corporation obtains but cannot use from being carried to a year in which the corporation is an S corporation and can be passed through to be used by its shareholders. Thus, section 1371(b)(1) effectively prevents shareholders of an S corporation from getting deductions or credits for items arising in a C corporation year.

In this instance, TTP (not TAC) was the owner of the Portfolio which contained the built-in loss, and such loss was not recognized until November 12 and 13, 2001, when the Portfolio was sold. For all times subsequent to October 1, 2001, TAC was a validly formed S corporation, and there was not a carryover of a recognized loss from a year in which TAC was a C corporation to a year in which TAC was an S corporation.

**X. OPINIONS**

Based on the above discussion and analysis, and subject to the qualifications, representations, limitations and assumptions set forth herein, we are of the opinion that under current U.S. Federal income tax law, it is more likely than not that:

1. TTP recognized all of the TTP Losses in its taxable year ending December 31, 2001.
2. The sale of the Portfolio occurred in TTP's required taxable year beginning October 1, 2001 and ending December 31, 2001.
3. TAC's initial taxable year ended September 30, 2001.
4. TAC made a valid election to be an S corporation for its taxable year beginning October 1, 2001.
5. TAC was required on October 1, 2001, to change its taxable year to the calendar year ending December 31, 2001.
6. Based on the representations of MK that the Debenture is bona fide debt for U.S. Federal income tax purposes, the Debenture does not constitute a second class of stock for purposes of section 1361(b)(1)(D).
7. With respect to rules or regulations potentially limiting or disallowing TTP's deduction for the TTP Losses:

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- a. The Service should be unsuccessful were it to assert that TTP should be disregarded as an entity under Treas. Reg. section 1.701-2, or that the transaction should otherwise be recast under Treas. Reg. section 1.701-2 to disallow the TTP Losses.
  - b. The sham transaction doctrine should not apply to the acquisition, holding and disposition of the Portfolio and the execution and termination of the Collar and, the acquisition, holding and disposition of the Portfolio and the execution and termination of the Collar should have the requisite business purpose and economic substance.
  - c. Although the matter cannot be entirely free from doubt because of the factual nature of the inquiry, on balance, the requisite profit motive should exist under sections 165(c)(2) for the acquisition, holding and disposition of the Portfolio and the execution and termination of the Collar.
  - d. None of the TTP Losses are disallowed under section 267(a)(1) or 707(b)(1).
8. The TTP Losses should be capital losses.
  9. TTP's adjusted basis in the Portfolio under section 723 is equal to Barnville's adjusted basis in such stocks at the time of the contribution.
  10. No adjustment under section 743(a) may be made to the basis of any of the Portfolio as a result of the acquisition by TAC and CS of their respective membership interests in TTP.
  11. The technical termination of TTP on September 24, 2001, under section 708(b)(1)(B), did not result in any adjustment to the basis of any of the Portfolio.
  12. Based upon the books and records of TTP supplied to us and the chart attached hereto as Exhibit A and verified by Quellos as accurate:
    - a. Barnville's aggregate adjusted basis in the Portfolio on the date Barnville transferred such stocks to TTP was \$1,480,941,293.
    - b. The total aggregate amount realized from the sale of the Portfolio in November 2001 was \$898,788,205.

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- c. The total aggregate amount of losses from the sale of the Portfolio was \$582,153,086.
- 13. Based upon the "Collar Analysis," attached as Exhibit B, as supplied to us as part of the books and records of TTP and verified by Quellos as accurate, TTP recognized an overall capital loss as a result of the termination of the Collar in November 2001 in the amount of \$116,759,623.
- 14. Under section 742, the payment by TAC to Barnville of \$768,784,235 on September 24, 2001, is taken into account in determining TAC's adjusted basis in its interest in TTP at the close of TTP's taxable year ending December 31, 2001.
- 15. Under section 722, TAC's cash contribution to TTP of \$31,208,373 on September 24, 2001, is taken into account in determining TAC's adjusted basis in its interest in TTP at the close of TTP's taxable year ending December 31, 2001.
- 16. Under section 722, TAC's contribution to TTP of Class B common shares of FFWW stock on October 22, 2001, increased TAC's adjusted basis in its interest in TTP at the close of TTP's taxable year ending December 31, 2001, by the amount of TAC's adjusted basis in such FFWW stock at the time of the contribution.
- 17. Under section 705(a)(1)(A), the amount of gain recognized by TTP from the sale of the FFWW stock and allocated to TAC is taken into account in determining TAC's adjusted basis in its interest in TTP at the close of TTP's taxable year ending December 31, 2001.
- 18. All the built-in losses in the Portfolio are allocable to TAC under section 704(c)(1).
- 19. Sections 382 and 383 do not apply to limit the amount of taxable income of TTP, HS, CS, or TAC that may be offset by the TTP Losses.
- 20. For purposes of section 465, HS will have an amount at risk equal to the proceeds of the FFWW stock held for use in the TTP Activity.
- 21. The amount with respect to which HS was, on December 31, 2001, at risk for the TTP Activity under section 465 was increased by his Equalization Payment.

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22. Section 469 does not apply to disallow any deductions derived from the TTP Losses.
23. TTP's realized loss from the sale of the Portfolio does not constitute a carryover under section 1371(b).

The opinions set forth above are subject to the following qualifications, limitations and exceptions: no opinion is expressed regarding the tax treatment of the described transaction for the purpose of any foreign, state or local income tax, or any tax other than the U.S. Federal income tax. Any misstatement of a material fact or omission of any fact that may be material or any change in any of the facts referred to may require a modification of all or part of our opinions.

Our opinions are limited to matters expressly set forth herein, and no opinion may be applied or inferred beyond the matters so stated. The opinions expressed herein are based upon our interpretation of current law. The opinions expressed herein are not binding on the Service or the courts, and there can be no assurance that the Service and the courts will not take a position contrary to the opinions expressed herein. We do not undertake to advise you of any changes in law which may occur after the date hereof. The Code, the Regulations promulgated thereunder, and the administrative position of the Service are subject to change either prospectively or retroactively. Such changes could render certain or all of the opinions expressed herein inapplicable.

Very truly yours,

*Bryan Cave LLP*  
Bryan Cave LLP

KS-00001152

**Haim Saban Representation Certificate**  
**for Titanium Trading Partners LLC Federal Income Tax Opinion**

In connection with the opinion to be delivered by Bryan Cave LLP to me, in my capacity as President of Titanium Acquisition Corporation ("TAC") which is the managing member of Titanium Trading Partners LLC ("TTP"), and recognizing (1) that Bryan Cave LLP will rely upon the following representations in issuing its tax opinion ("Tax Opinion") to TTP, and (2) that the tax opinions set forth therein may not be accurate if any of the following representations are not accurate in all material respects, I, Haim Saban, hereby certify that the following representations are true, correct and complete to the best of my knowledge.

Unless otherwise specified, all capitalized terms used herein without definition shall have the meanings assigned to them in the Tax Opinion.

1. I have reviewed the "Facts" section of the Opinion and the "Facts" section accurately and completely describes all of the material transactions and discussions set forth therein.
2. Toward the end of 1999, it had become clear to me that the overall business objectives of FBC and News were inconsistent with the steps that I felt were necessary to achieve the level of growth in FFWW that would justify holding such a large portion of my family net worth in FFWW stock.
3. Although I commenced efforts to negotiate a restructuring of my relationship with FBC to alleviate problems resulting from our differing business objectives, I soon realized that I would also have to focus on ways to monetize at least a portion of the FFWW stock held by the Saban Shareholders in the event that I was unable to achieve a satisfactory resolution with FBC in a reasonable amount of time.
4. I believed that monetization of the FFWW stock would yield two benefits: (i) provide a way to diversify my holdings, and (ii) allow me to capitalize on investment opportunities I believed to have greater return potential than the FFWW stock.
5. Although I believed that the most obvious method of monetizing the FFWW stock was to exercise the Put Option, several reasons militated against this:

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 Permanent Subcommittee on Investigations

**DISCUSSION OF FACTORS MITIGATING  
 AGAINST EXERCISE OF PUT OPTION**

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Permanent Subcommittee on Investigations  
 EXHIBIT #63b

KS-00001158

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Subcommittee on Investigations

**Redacted By**  
**Permanent Subcommittee on Investigations**

**DISCUSSION OF FACTORS MITIGATING  
AGAINST EXERCISE OF PUT OPTION**

6. I believed that, although the Saban Shareholders theoretically bore no risk of decline in the value of FFWW after the valuation date under the Amended SSA, it would be difficult for a valuation given by an appraiser months or years after that date not to be tainted by a severe falloff in value of FFWW, even if the falloff in fact occurred after the valuation date.
7. Throughout 2000, I continued to discuss various restructuring arrangements with FBC and began investigating other monetization possibilities with various financial consultants and institutions.
8. I found that financial institutions were generally open to monetizing my FFWW stock by making a full-recourse loan to me secured by a pledge of my FFWW stock; however a pledge of the my FFWW stock was prohibited by the No-Lien Clause. In addition, I was seeking to reduce my personal exposure for borrowed money, not increase it. [REDACTED]
9. I was advised that I might be able to borrow money. [REDACTED] on a non-recourse or limited-recourse basis by pledging the assets purchased with the borrowed funds.
10. I believed that I had exhausted, without success, every avenue to resolve the situation with FBC as the December 31, 2000, deadline approached for giving notice of exercise of the Put Option.
11. During the 1990s, Silverlight and I were significantly underweighted in our exposure to the publicly traded technology sector, having persistently avoided it as overpriced, overhyped and excessively volatile; however after the decline at the beginning of 2001, I believed that the sector presented genuine short-term buying opportunities.
12. I believed that TAC had a bona fide opportunity to make a significant short-term profit with respect to its ownership of an interest in TTP, even after taking into account all transaction costs and the cost of the Collar.
13. Due to the volatility of the technology stocks, I had no interest in holding a portfolio of such stocks for any length of time; on the contrary, I believed that the current stock market decline coupled with the volatility presented a prudent opportunity to make a short-term profit in this sector.

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Subcommittee on Investigations

14. After the exercise of the Call Option, there was virtually no progress toward a determination of the purchase price for the Saban Shareholders' FFWW stock. I had numerous fundamental disagreements with FSB over the proper interpretation of the definition "Fair Market Value" in the SSA, as well as over the appropriate valuation methodology. Thus, I began to intensify my efforts to find a monetization mechanism for my FFWW stock.
15. I favored the idea of the Collar because it brought the overall risk of owning the Portfolio down while still retaining potential for significant short-term return on the investment in the Portfolio.
16. During the Spring and into the Summer of 2001, MK and I had numerous meetings and conversations about [REDACTED] Silverlight's possible purchase of the TTP interest.
17. After FBC decided in May 2001 to seek a third party purchaser for FFWW rather than purchase the shares of the Saban Shareholders, I believed that a monetization of the Saban Shareholders' FFWW stock became even more important because it was absolutely certain that no attention or energy on the part of FBC would be given to the Appraisal Mechanism during the period for the solicitation of buyers. If no buyers emerged during this period, the Appraisal Mechanism would be reinstated and FBC would be no closer to effectuating the purchase of the Saban Shareholder's FFWW shares and at least another year would have elapsed.
18. In July 2001, Murdoch and I met with Eisner at an annual industry conference to discuss Disney's possible acquisition of all of FFWW. At the conclusion of the meeting, Eisner acting on behalf of Disney made an offer to purchase all of the outstanding common stock of FFWW and the Fox Notes held by an FBC affiliate for a certain amount of cash.
19. Significant domestic and foreign regulatory approvals were required prior to the consummation of the sale of FFWW stock to Disney the timing of which was beyond my knowledge and control. Thus, my liquidity and ability to diversify my investments continued to be illusory.
20. After the events of September 11, 2001, the consummation of the sale of FFWW to Disney became very uncertain.
21. MK and I continued our discussions in the Summer of 2001 to resolve the various issues [REDACTED] regarding a purchase by Silverlight of Barnville's interest in TTP. These discussions made it increasingly clear to both of us that it was in all of the parties' best interests for CS' and my interests in Silverlight to be somehow severed from the interests of the other limited partners, with a commensurate division of the partnership assets.

22.

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DISCUSSION OF ISSUES REGARDING  
ORGANIZATION AND OBLIGATIONS OF  
SILVERLIGHT PARTNERS

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..S-00001160

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Subcommittee on Investigations

23. **Redacted By**  
**Permanent Subcommittee on Investigations**

**DISCUSSION OF ISSUES REGARDING  
ORGANIZATION AND OBLIGATIONS OF  
SILVERLIGHT PARTNERS**

24. I raised the question with MK, who I understand raised it with Quellos, of whether the interest in TTP would be pledged to HSBC after its distribution to CS and me, and if so, whether the distribution could cause CS and me to be viewed as having personally assumed liability for the Loan.
25. MK and I agreed that Barnville's interest in TTP should be acquired by a new wholly-owned entity of Silverlight to which Silverlight would contribute the proceeds from the Loan, and we both thought that the new entity should not take the form of a limited liability company but instead be formed as a corporation. I was especially adamant in this regard because I was almost entirely unfamiliar with the limited liability company form of entity, having rarely utilized one to carry on any of my own business enterprises.
26. I had almost always operated my businesses in the U.S. through corporations, beginning with Saban Productions, Inc. in 1983, and sole proprietorships. One exception may be Fox Kids Worldwide, LLC, although it was jointly owned with the Fox entities.
27. After CW received confirmation from HSBC that it would agree in principle to make a loan to Silverlight in accordance with the outlines of Quellos' plan, I began work with CW to effectuate the structure to accomplish my goals and objectives.
28. I believed that the value of Silverlight's assets plus the value of [REDACTED] assets were sufficient to satisfy Silverlight's obligations.
29. I was interested in having TAC obtain an interest in TTP to be able to use it as a vehicle for making additional investments in the future; since TAC obtained an interest in TTP, TAC has caused TTP to invest its assets in cash and U.S. debt instruments.
30. I had acquired my partnership interest in Silverlight through partnership distributions from [REDACTED]

**Redacted By**  
**Permanent Subcommittee on Investigations**

**DISCUSSION OF DISTRIBUTION BY PARTNERS OF  
SILVERLIGHT**

31. The Redemption Agreement between Silverlight and me regarding the distribution of the TAC stock to me in liquidation of my interest in Silverlight on September 28, 2001, accurately reflected my understanding of our respective rights and interests, and no other distribution was made to me in liquidation of my interest. The transfer of the TAC stock from Silverlight to me was in complete redemption of my membership interest in Silverlight.



32. I have never contributed any property to Silverlight.
33. Silverlight did not make any cash payments to me as part of the redemption of my partnership interest in Silverlight.
34. On December 28, 2001, pursuant to the Redemption Agreement, I made an Equalization Payment to Silverlight, plus interest, in the total amount of \$18,719,279. The Equalization Payment paid by me to Silverlight was for a portion of the TAC stock in excess of the fair market value of my interest in Silverlight that was redeemed.
35. 5161 is my wholly owned S corporation.
36. I am a U.S. citizen and my taxable year is the calendar year.

IN WITNESS WHEREOF, I have signed this Representation Certificate this 11 day of October, 2002.

Muhammad  
Witness

Haim Saban  
Haim Saban

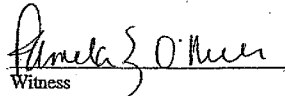
**Chuck Wilk Representation Certificate**  
**for Titanium Trading Partners LLC Federal Income Tax Opinion**

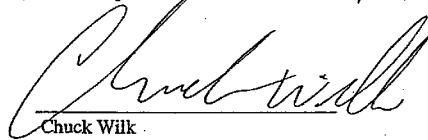
In connection with the opinion to be delivered by Bryan Cave LLP to Haim Saban, in his capacity as President of Titanium Acquisition Corporation ("TAC") which is the managing member of Titanium Trading Partners LLC ("TTP"), and recognizing (1) that Bryan Cave LLP will rely upon the following representations in issuing its tax opinion ("Tax Opinion") to TTP, and (2) that the tax opinions set forth therein may not be accurate if any of the following representations are not accurate in all material respects, Chuck Wilk, of Quellos Custom Strategies, LLC ("Quellos"), hereby certifies that the following representations are true, correct and complete to the best of his knowledge.

Unless otherwise specified, all capitalized terms used herein without definition shall have the meanings assigned to them in the Tax Opinion.

1. I have reviewed the "Facts" section of the Tax Opinion, and the "Facts" section accurately and completely describes all of the material transactions and discussions set forth therein.
2. I am not aware of any other transactions or discussions, other than those set forth in the "Facts" section of the Tax Opinion, that are material to the transactions described therein.
3. Quellos received the books and records of TTP for the periods prior to September 24, 2001 from Euram and provided Bryan Cave LLP with a copy of such books and records in connection with the Tax Opinion.
4. The gains and losses recognized by TTP on the sale of the Portfolio and the unwind of the Collar are set forth on Schedules A and B, respectively, attached hereto and which have been verified by Quellos as accurate.

IN WITNESS WHEREOF, I have signed this Representation Certificate this 11 day of October, 2002.

  
 Witness

  
 Chuck Wilk  
 of Quellos Custom Strategies, LLC

## SCHEDULE A

## Titanium Trading Partners LLC

Portfolio as of 9/24/01 Based on Acquisition cost - Beaverville

Stock	Shares	Date purchased	Basis per share	Basis	9/24/01 per sh.	9/24/01 Value	Built-in gain (loss)
ADBE	1,723,000	June 6, 2000	57.8438	\$ 99,954,000	25,3018	\$ 43,721,510	\$ (56,232,490)
ADP	1,733,000	June 6, 2000	57.6875	\$ 99,972,438	46,5344	\$ 80,644,115	\$ (19,328,322)
AMAT	700,000	June 6, 2000	89.3125	\$ 62,518,750	29,6057	\$ 20,723,990	\$ (41,794,760)
AOL	1,000,000	January 3, 2000	82.7500	\$ 82,750,000	32,5715	\$ 32,571,500	\$ (50,178,500)
AOL	1,649,485	February 28, 2000	60.6250	\$ 100,000,028	32,5715	\$ 53,726,201	\$ (46,273,827)
RGEN	953,516	February 28, 2000	104.8750	\$ 99,999,991	53,1584	\$ 50,687,385	\$ (49,312,606)
CCU	973,596	January 3, 2000	87.7500	\$ 85,433,049	38,7761	\$ 37,752,256	\$ (47,680,793)
CSCO	2,000,000	September 21, 2001	12.5506	\$ 25,101,200	12,5506	\$ 25,101,200	0
DELL	2,238,000	June 6, 2000	44.8875	\$ 100,010,625	18,6051	\$ 41,638,214	\$ (58,372,411)
EBAY	250,000	February 28, 2000	72.5313	\$ 18,132,813	46,6758	\$ 11,668,950	\$ (6,463,863)
EBAY	1,393,000	June 6, 2000	71.8125	\$ 100,034,813	46,6758	\$ 65,019,389	\$ (35,015,423)
EBAY	1,538,462	December 28, 1999	69.9350	\$ 107,592,340	46,6758	\$ 71,803,945	\$ (35,788,395)
INTC	1,150,000	September 21, 2001	21.4840	\$ 24,706,600	21,4840	\$ 24,706,600	0
MSFT	745,500	September 21, 2001	52.1351	\$ 38,866,717	52,1351	\$ 38,866,717	0
NOK	900,000	June 6, 2000	55.6250	\$ 50,062,500	16,8658	\$ 15,179,220	\$ (34,883,280)
ORCL	900,000	June 6, 2000	38.5313	\$ 34,678,125	12,3191	\$ 11,087,190	\$ (23,590,935)
PCS	1,756,000	June 6, 2000	56.9375	\$ 99,982,250	25,2670	\$ 44,568,852	\$ (55,413,398)
Q	2,339,181	January 3, 2000	42.1200	\$ 98,526,304	19,9605	\$ 46,691,222	\$ (51,835,081)
QCOM	975,000	February 28, 2000	143.2500	\$ 82,368,750	47,2022	\$ 27,141,265	\$ (55,227,485)
XLNX	1,000,000	February 28, 2000	70.2500	\$ 70,250,000	25,7554	\$ 25,755,400	\$ (44,494,600)

\$ 1,480,941,291

\$ 768,861,121

\$ (712,080,170)

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## Schedule A

## Titanium Trading Partners LLC

First Unwind 11/12/01

Stock	11/12/01 shares sold	11/12/01 per share	11/12/01 amt realized	11/12/01 p/r basis	11/12/01 realized g/l	11/12/01 built-in loss
ADBE	1,296,000	28.8805	\$37,423,128	\$74,965,500	\$87,536,372	\$ (42,174,367)
ADP	1,299,780	54.5147	\$70,855,481	\$74,979,328	\$ (4,123,847)	\$ (14,496,242)
AMAT	525,400	38.8496	\$20,396,040	\$46,889,063	\$26,493,023	\$ (31,346,070)
AOL	750,000	36.4284	\$27,321,303	\$62,062,508	\$34,741,204	\$ (37,633,880)
AOL	1,237,114	36.4284	\$45,066,080	\$75,000,031	\$29,933,950	\$ (34,705,375)
BGEN	715,137	54.6455	\$39,079,019	\$74,999,993	\$35,920,974	\$ (36,984,434)
CCU	730,197	42.2173	\$30,826,946	\$64,074,787	\$33,247,841	\$ (35,760,595)
CSCO	1,500,000	19.1515	\$28,727,250	\$18,825,900	\$ 9,901,350	\$ --
DELL	1,678,500	25.6191	\$43,001,659	\$75,007,969	\$32,006,309	\$ (43,779,308)
EBAY	187,500	57.4647	\$10,774,629	\$13,599,607	\$ (2,824,978)	\$ (4,847,896)
EBAY	1,044,750	57.4647	\$60,036,233	\$75,026,094	\$14,989,861	\$ (26,261,562)
EBAY	1,153,846	57.4647	\$66,305,429	\$80,694,238	\$14,388,809	\$ (26,837,541)
INTC	862,500	28.4093	\$24,503,021	\$18,529,950	\$ 5,973,071	\$ --
MSFT	559,125	65.8246	\$36,804,179	\$29,150,038	\$ 7,654,142	\$ --
NOK	675,000	22.3232	\$15,068,160	\$37,546,875	\$22,478,715	\$ (26,162,460)
ORCL	675,000	15.3539	\$10,363,883	\$26,008,594	\$ (5,644,711)	\$ (17,693,201)
PCS	1,317,000	24.4271	\$32,170,491	\$74,986,688	\$42,816,197	\$ (41,710,049)
Q	1,754,386	11.4590	\$20,103,509	\$73,894,738	\$53,791,229	\$ (38,876,317)
QCOM	431,250	55.8509	\$24,085,701	\$61,776,563	\$37,690,862	\$ (41,420,614)
XLNX	750,000	36.9344	\$27,700,800	\$52,687,500	\$24,986,700	\$ (33,370,200)
			\$670,618,942	\$1,110,705,960	\$ (440,087,019)	\$ (594,060,130)

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## Schedule A

Titanium Trading Partners LLC

Partners of 11/13/01

Second Unwind on 11/13/01

Xctw

Stock	11/13/01 shares sold	11/13/01 per share	11/13/01 amt realized	11/13/01 p/r basis	11/13/01 realized g/l	11/13/01 built-in loss
ADBE	432,000	29.7658	\$ 12,858,826	\$ 24,988,500	\$ (12,129,674)	\$ (14,958,122)
ADP	433,250	54.4995	\$ 23,611,908	\$ 24,993,109	\$ (1,381,201)	\$ (4,832,081)
AMAT	175,000	40.0196	\$ 7,003,430	\$ 15,629,688	\$ (8,626,258)	\$ (10,448,690)
AOL	250,000	37.3404	\$ 9,335,096	\$ 20,687,492	\$ (11,352,396)	\$ (12,544,620)
AOL	412,371	37.3404	\$ 15,398,102	\$ 24,999,998	\$ (9,601,896)	\$ (11,568,452)
EGEN	238,379	55.2033	\$ 13,159,307	\$ 24,999,998	\$ (11,840,690)	\$ (12,328,151)
CCU	243,399	44.9500	\$ 10,940,785	\$ 21,358,282	\$ (10,417,497)	\$ (11,920,198)
CSCO	500,000	19.7215	\$ 9,860,750	\$ 6,275,300	\$ 3,585,450	\$ ---
DELL	559,500	26.3684	\$ 14,753,120	\$ 25,002,656	\$ (10,249,536)	\$ (14,993,103)
EBAY	62,500	58.3380	\$ 3,646,127	\$ 4,533,206	\$ (887,079)	\$ (1,615,967)
EBAY	348,250	58.3380	\$ 20,316,221	\$ 25,008,719	\$ (4,692,498)	\$ (6,733,861)
EBAY	384,616	58.3380	\$ 22,437,713	\$ 26,898,102	\$ (4,460,389)	\$ (8,945,854)
INTC	287,500	29.0476	\$ 8,351,185	\$ 6,176,650	\$ 2,174,535	\$ ---
MSFT	186,375	66.7936	\$ 12,448,657	\$ 9,716,679	\$ 2,731,978	\$ ---
NOK	225,000	23.0045	\$ 5,176,013	\$ 12,515,625	\$ (7,339,613)	\$ (8,720,820)
ORCL	225,000	15.0710	\$ 3,390,975	\$ 8,669,531	\$ (5,278,556)	\$ (6,897,734)
PCS	439,000	24.6743	\$ 10,832,018	\$ 24,995,563	\$ (14,163,545)	\$ (13,903,350)
Q	584,795	11.8501	\$ 6,929,879	\$ 24,631,565	\$ (17,701,686)	\$ (12,958,765)
QCOM	143,750	56.8487	\$ 8,172,001	\$ 20,592,188	\$ (12,420,187)	\$ (13,806,871)
XLNX	250,000	38.1886	\$ 9,547,150	\$ 17,562,500	\$ (8,015,350)	\$ (11,122,400)

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\$228,169,263      \$ 370,235,230      \$(142,066,967)      \$(178,020,040)

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Schedule A

Titanium Trading Partners LLC

Aggregation of 11/12/01 and 11/13/01 Unwinds

Stock	Total realized	Total realized g/l	LT/ST	Built-ins realized?	TTP Losses	Contrib. Basis	Cont. Amt. Repl.
ADBE	\$ 50,287,954	\$ (49,666,046)	L	B	\$ (49,666,046)	\$ 99,954,000	\$50,287,954
ADP	\$ 94,467,390	\$ (9,505,048)	L	B	\$ (9,505,048)	\$ 99,972,438	\$94,467,390
AMAT	\$ 27,999,470	\$ (35,119,280)	L	B	\$ (35,119,280)	\$ 62,518,750	\$27,999,470
AOL	\$ 36,656,400	\$ (46,093,600)	L	B	\$ (46,093,600)	\$ 82,750,000	\$36,656,400
AOL	\$ 60,464,182	\$ (39,535,846)	L	B	\$ (39,535,846)	\$100,000,028	\$60,464,182
BGEN	\$ 52,238,326	\$ (47,761,664)	L	B	\$ (47,761,664)	\$ 99,999,991	\$52,238,326
CCU	\$ 41,767,731	\$ (43,665,318)	L	B	\$ (43,665,318)	\$ 85,433,049	\$41,767,731
CSCO	\$ 38,588,000	\$ 13,486,800	S	NA	0	0	0
DELL	\$ 57,754,779	\$ (42,255,846)	L	B	\$ (42,255,846)	\$100,010,625	\$57,754,779.15
EBAY	\$ 14,420,756	\$ (3,712,056)	L	B	\$ (3,712,056)	\$ 18,132,813	\$14,420,756
EBAY	\$ 80,352,454	\$ (19,682,388)	L	B	\$ (19,682,388)	\$100,034,813	\$80,352,454
EBAY	\$ 88,743,142	\$ (18,849,198)	L	B	\$ (18,849,198)	\$107,592,340	\$88,743,142
INTC	\$ 32,854,206	\$ 8,187,606	S	NA	0	0	0
MSFT	\$ 49,252,837	\$ 10,386,120	S	NA	0	0	0
NOK	\$ 20,244,173	\$ (29,818,328)	L	B	\$ (29,818,328)	\$ 50,062,500	\$20,244,173
ORCL	\$ 13,754,858	\$ (20,923,268)	L	B	\$ (20,923,268)	\$ 34,678,125	\$13,754,858
PCS	\$ 43,002,508	\$ (56,979,742)	L	R	\$ (56,979,742)	\$ 99,982,250	\$43,002,508
Q	\$ 27,033,388	\$ (71,492,915)	L	R	\$ (71,492,915)	\$ 98,526,304	\$27,033,388
QCOM	\$ 32,257,701	\$ (50,111,049)	L	B	\$ (50,111,049)	\$ 82,368,750	\$32,257,701
XLNX	\$ 37,247,950	\$ (93,002,050)	L	B	\$ (93,002,050)	\$ 70,250,000	\$37,247,950
	\$ 898,788,205	\$ 582,153,086)			\$ (614,173,612)	\$1,392,266,774	\$778,093,162

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KS-00001173

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SCHEDULE B

**Titanium Trading Partners LLC**

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*Collar Analysis*

	<u>9/24/01</u> <u>Initial Cost</u>	<u>11/12/01</u> <u>Unwind</u>	<u>11/13/01</u> <u>Unwind</u>	<u>Total</u>
Put	(76,886,112)	7,960,898	2,130,379	(66,794,835)
Call	<u>45,362,806</u>	<u>(68,928,692)</u>	<u>(26,698,902)</u>	<u>(49,964,788)</u>
	(31,523,306)	<u>(60,967,794)</u>	<u>(24,268,523)</u>	<u>(116,759,623)</u>

## Schedule A - Titanium Trading Partners LLC

Portfolio as of 9/24/01 - Based on Acquisition Cost - Barnville

Stock	Shares	Date purchased	Basis per share	Basis	9/24/01 per sh.	9/24/01 Value	Bull-in gain (loss)
ADBE	1,728,000	June 6, 2000	57.8438	\$ 99,954,000	25.3018	\$ 43,721,510	\$ (56,232,490)
ADP	1,733,000	June 6, 2000	57.6875	\$ 99,972,438	46.5344	\$ 80,644,115	\$ (19,328,322)
AMAT	700,000	June 6, 2000	89.3125	\$ 62,518,750	29.6057	\$ 20,723,990	\$ (41,794,760)
AOL	1,000,000	January 3, 2000	82.7500	\$ 82,750,000	32.5715	\$ 32,571,500	\$ (50,178,500)
AOL	1,649,485	February 28, 2000	60.6250	\$ 100,000,028	32.5715	\$ 53,726,201	\$ (46,273,827)
BGEN	953,516	February 28, 2000	104.8750	\$ 99,999,991	53.1584	\$ 50,687,385	\$ (49,312,606)
CCU	973,596	January 3, 2000	87.7500	\$ 85,433,049	38.7761	\$ 37,752,256	\$ (47,680,793)
CSCO	2,000,000	September 21, 2001	12.5506	\$ 25,101,200	12.5506	\$ 25,101,200	0
DELL	2,238,000	June 6, 2000	44.6875	\$ 100,010,625	18.6051	\$ 41,638,214	\$ (58,372,411)
EBAY	250,000	February 28, 2000	72.5313	\$ 18,132,813	46.6758	\$ 11,668,950	\$ (6,463,863)
EBAY	1,393,000	June 6, 2000	71.8125	\$ 100,034,813	46.6758	\$ 65,019,389	\$ (35,015,423)
EBAY	1,538,462	December 28, 1999	69.9350	\$ 107,592,940	46.6758	\$ 71,808,945	\$ (35,783,995)
INTC	1,150,000	September 21, 2001	21.4840	\$ 24,706,600	21.4840	\$ 24,706,600	0
MSFT	745,500	September 21, 2001	52.1351	\$ 38,866,717	52.1351	\$ 38,866,717	0
NOK	900,000	June 6, 2000	55.6250	\$ 50,062,500	16.8658	\$ 15,179,220	\$ (34,883,280)
ORCL	900,000	June 6, 2000	38.5313	\$ 34,678,125	12.3191	\$ 11,087,190	\$ (23,590,935)
PCS	1,756,000	June 6, 2000	56.9375	\$ 99,982,250	25.2670	\$ 44,368,852	\$ (55,613,398)
Q	2,339,181	January 3, 2000	42.1200	\$ 98,526,504	19.9605	\$ 46,691,222	\$ (51,835,081)
QCOM	575,000	February 28, 2000	143.2500	\$ 82,368,750	47.2022	\$ 27,141,265	\$ (55,227,485)
XLNX	1,000,000	February 28, 2000	70.2500	\$ 70,250,000	25.7564	\$ 25,756,400	\$ (44,493,600)

\$ 1,480,941,291

\$ 768,861,121

\$ (712,080,170)

KS-00001175



**Schedule A - Titanium Trading Partners LLC**  
**First Unwind on 11/12/01**

11/12/01 shares sold	11/12/01 per share	11/12/01 amt realized	11/12/01 p/r basis	11/12/01 realized g/l	11/12/01 built-in loss
1,296,000	28,8805	\$ 37,429,128	\$ 74,965,500	\$ (37,536,372)	\$ (42,174,367)
1,299,750	54,5147	\$ 70,855,481	\$ 74,979,328	\$ (4,123,847)	\$ (14,496,242)
525,000	38,8496	\$ 20,396,040	\$ 46,889,063	\$ (26,493,023)	\$ (31,346,070)
750,000	36,4284	\$ 27,321,303	\$ 62,062,508	\$ (34,741,204)	\$ (37,633,880)
1,237,114	36,4284	\$ 45,066,080	\$ 75,000,031	\$ (29,933,950)	\$ (34,705,375)
715,137	54,6455	\$ 39,079,019	\$ 74,999,993	\$ (35,920,974)	\$ (36,984,454)
730,197	42,2173	\$ 30,826,946	\$ 64,074,787	\$ (33,247,841)	\$ (35,760,995)
1,500,000	19,1515	\$ 28,727,250	\$ 18,825,900	\$ 9,901,350	\$ -
1,678,500	25,6191	\$ 43,001,659	\$ 75,007,969	\$ (32,006,309)	\$ (43,779,308)
187,500	57,4647	\$ 10,774,629	\$ 13,599,607	\$ (2,824,978)	\$ (4,847,896)
1,044,750	57,4647	\$ 60,036,233	\$ 75,026,094	\$ (14,989,861)	\$ (26,261,562)
1,153,846	57,4647	\$ 66,305,429	\$ 80,694,238	\$ (14,388,809)	\$ (26,837,541)
862,500	28,4093	\$ 24,503,021	\$ 18,529,950	\$ 5,973,071	\$ -
559,125	65,8246	\$ 36,804,179	\$ 29,150,038	\$ 7,654,142	\$ -
675,000	22,3232	\$ 15,068,160	\$ 37,546,875	\$ (22,478,715)	\$ (26,162,460)
675,000	15,3539	\$ 10,363,883	\$ 26,008,594	\$ (15,644,711)	\$ (17,693,201)
1,317,000	24,4271	\$ 32,170,491	\$ 74,986,688	\$ (42,816,197)	\$ (41,710,049)
1,754,386	11,4590	\$ 20,103,509	\$ 73,894,738	\$ (53,791,229)	\$ (38,876,317)
431,250	55,8509	\$ 24,085,701	\$ 61,776,563	\$ (37,690,862)	\$ (41,420,614)
750,000	36,9344	\$ 27,700,800	\$ 52,687,500	\$ (24,986,700)	\$ (33,370,200)
		\$ 670,618,942	\$ 1,110,705,960	\$ (440,087,019)	\$ (594,060,130)

KS-00001176

Schedule A - Titanium Trading Partners LLC  
 Second Unit held on 11/13/01

11/13/01 shares sold	11/13/01 per share	11/13/01 amt realized	11/13/01 p/f basis	11/13/01 realized g/l	11/13/01 built-in loss
432,000	\$ 29,7658	\$ 12,858,826	\$ 24,988,500	\$ (12,129,674)	\$ (4,058,122)
433,250	\$ 54,4995	\$ 23,611,908	\$ 24,993,109	\$ (1,381,201)	\$ (4,832,081)
175,000	\$ 40,0196	\$ 7,003,430	\$ 15,629,688	\$ (8,626,258)	\$ (10,448,690)
250,000	\$ 37,3404	\$ 9,335,096	\$ 20,687,492	\$ (11,352,396)	\$ (12,544,620)
412,371	\$ 37,3404	\$ 15,398,102	\$ 24,999,998	\$ (9,601,896)	\$ (11,568,452)
238,379	\$ 55,2033	\$ 13,159,307	\$ 24,999,998	\$ (11,840,690)	\$ (12,328,151)
243,399	\$ 44,9500	\$ 10,940,785	\$ 21,358,262	\$ (10,417,477)	\$ (11,920,198)
500,000	\$ 19,7215	\$ 9,860,750	\$ 6,275,300	\$ 3,585,450	\$ -
559,500	\$ 26,3684	\$ 14,753,120	\$ 25,002,656	\$ (10,249,536)	\$ (14,593,103)
62,500	\$ 58,3380	\$ 3,646,127	\$ 4,533,206	\$ (887,079)	\$ (1,615,967)
348,250	\$ 58,3380	\$ 20,316,221	\$ 25,008,719	\$ (4,692,498)	\$ (8,753,861)
384,616	\$ 58,3380	\$ 22,437,713	\$ 26,898,102	\$ (4,460,389)	\$ (8,945,854)
287,500	\$ 29,0476	\$ 8,351,185	\$ 6,176,650	\$ 2,174,535	\$ -
186,375	\$ 66,7936	\$ 12,448,657	\$ 9,716,679	\$ 2,731,978	\$ -
225,000	\$ 23,0045	\$ 5,176,013	\$ 12,515,625	\$ (7,339,613)	\$ (8,720,820)
225,000	\$ 15,0710	\$ 3,390,975	\$ 8,669,531	\$ (5,278,556)	\$ (5,897,794)
439,000	\$ 24,6743	\$ 10,832,018	\$ 24,995,563	\$ (14,163,545)	\$ (13,903,350)
584,795	\$ 11,8501	\$ 6,929,879	\$ 24,031,565	\$ (17,101,686)	\$ (12,988,765)
143,750	\$ 56,8487	\$ 8,172,001	\$ 20,592,188	\$ (12,420,187)	\$ (13,806,871)
250,000	\$ 38,1886	\$ 9,547,150	\$ 17,562,500	\$ (8,015,350)	\$ (11,123,400)
	\$	\$ 228,169,263	\$ 370,235,330	\$ (142,066,067)	\$ (178,020,040)

KS-00001177

## Schedule A - Titanium Trading Partners LLC

Aggregation of 11/12/01 and 11/13/01 Unwinds

Total amt realized	Total realized g/l	LT/ST	Built-in>realized ?	TTP Losses	Contrib. Basis	Cont. Amt. Real.
\$ 50,287,954	\$ (49,666,046)	L	B	\$ (49,666,046)	\$ 99,954,000	\$ 50,287,954
\$ 94,467,390	\$ (5,505,048)	L	B	\$ (5,505,048)	\$ 99,972,438	\$ 94,467,390
\$ 27,399,470	\$ (35,119,280)	L	B	\$ (35,119,280)	\$ 62,518,750	\$ 27,399,470
\$ 36,656,400	\$ (46,093,600)	L	B	\$ (46,093,600)	\$ 82,750,000	\$ 36,656,400
\$ 60,464,182	\$ (39,535,846)	L	B	\$ (39,535,846)	\$ 100,000,028	\$ 60,464,182
\$ 52,238,326	\$ (47,761,664)	L	B	\$ (47,761,664)	\$ 99,999,991	\$ 52,238,326
\$ 41,767,731	\$ (43,665,318)	L	B	\$ (43,665,318)	\$ 85,433,049	\$ 41,767,731
\$ 38,588,000	\$ 13,486,800	S	NA	0	0	0
\$ 57,754,779	\$ (42,255,846)	L	B	\$ (42,255,846)	\$ 100,010,625	\$ 57,754,779.15
\$ 14,420,756	\$ (3,712,056)	L	B	\$ (3,712,056)	\$ 18,132,813	\$ 14,420,756
\$ 80,352,454	\$ (19,682,358)	L	B	\$ (19,682,358)	\$ 100,034,813	\$ 80,352,454
\$ 88,743,142	\$ (18,849,198)	L	B	\$ (18,849,198)	\$ 107,592,340	\$ 88,743,142
\$ 32,854,206	\$ 8,147,606	S	NA	0	0	0
\$ 49,252,837	\$ 10,386,120	S	NA	0	0	0
\$ 20,244,173	\$ (29,818,328)	L	B	\$ (29,818,328)	\$ 50,062,500	\$ 20,244,173
\$ 13,754,858	\$ (20,923,268)	L	B	\$ (20,923,268)	\$ 34,678,125	\$ 13,754,858
\$ 43,002,508	\$ (56,979,742)	L	R	\$ (56,979,742)	\$ 99,982,250	\$ 43,002,508
\$ 27,033,388	\$ (71,492,915)	L	R	\$ (71,492,915)	\$ 98,526,304	\$ 27,033,388
\$ 32,257,701	\$ (50,111,049)	L	B	\$ (50,111,049)	\$ 82,368,750	\$ 32,257,701
\$ 37,247,950	\$ (33,002,050)	L	B	\$ (33,002,050)	\$ 70,250,000	\$ 37,247,950
\$ 898,788,205	\$ (582,153,086)			\$ (614,173,612)	\$ 1,392,266,774	\$ 778,093,162

KS-00001178

**Titanium Acquisition Corporation Representation Certificate**  
**for Titanium Trading Partners LLC Federal Income Tax Opinion**

In connection with the opinion to be delivered by Bryan Cave LLP to Haim Saban, as President of Titanium Acquisition Corporation ("TAC") which is the managing member of Titanium Trading Partners LLC ("TTP"), and recognizing (1) that Bryan Cave LLP will rely upon the following representations in issuing its tax opinion ("Tax Opinion") to TTP, (2) that TAC has received certain representations from Barnville Limited ("Barnville"), a copy of which is attached hereto as Exhibit A, which TAC is relying upon in making its representations in number 16 below, and (3) that the tax opinions set forth therein may not be accurate if any of the following representations are not accurate in all material respects, Haim Saban as President of TAC hereby certifies that the following representations are true, correct and complete to the best of his knowledge.

Unless otherwise specified, all capitalized terms used herein without definition shall have the meanings assigned to them in the Tax Opinion.

1. At its inception, TAC kept its books and records on a fiscal year ending September 30.
2. On or before December 15, 2001, TAC filed Form 7004 to extend the due date of its tax return for its first taxable year ending September 30, 2001, and on June 17, 2002, TAC's tax return for taxable year ending September 30, 2001 was timely filed. An amended return for TAC's first taxable year ending September 30, 2001, filed to correct an error on Schedule L, "Balance Sheets Per Books" will be filed on or before October 15, 2002.
3. On September 24, 2001, TAC received \$800 million from Silverlight in part as a capital contribution to TAC and in part for the acquisition of the Debenture. The \$800 million was transferred from Silverlight's HSBC account to TAC's HSBC account. Following the transfer, Silverlight had no further interest in the \$800 million and TAC had no arrangement providing for the return of such funds to Silverlight.
4. On September 24, 2001, TAC used a portion of the \$800 million to purchase a ninety-nine percent interest in TTP from Barnville for \$768,784,235.
5. The purchase by TAC of Barnville's interest in TTP was an arm's length transaction and the entire purchase price was paid in cash.
6. TAC purchased the Barnville interest in TTP with the intent to make an economic profit.
7. There were several reasons for TAC purchasing the ninety-nine percent interest in TTP rather than purchasing the Portfolio directly, including to acquire the Portfolio in a less expensive manner because it was determined that to purchase Barnville's membership interest in TTP was likely to be less expensive than trying to acquire the identical Portfolio in the open market because of (a) the potential detrimental effect that a purchase of a large block of stock might have on the market price of such stocks, and (b) the lower transaction costs involved to purchase Barnville's membership interest in TTP (which already held the Portfolio).

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Permanent Subcommittee on Investigations  
**EXHIBIT #63d**

KS-00001185

8. TAC intended to hold TTP as an investment vehicle for an indefinite period of time.
9. On September 24, 2001, TAC made a cash contribution of \$31,208,373 to TTP to allow TTP to purchase the Collar. This cash contribution was a bona fide contribution to TTP's capital, and TAC's payment was in proportion to its interest in TTP.
10. TTP acquired the Collar to hedge its risk of holding the Portfolio (which was a prerequisite of HSBC making the Loan) while retaining some of the upside potential of its investment. TTP was interested in retaining as much profit potential from its equity investments while protecting itself from further erosion of this investment.
11. TTP held the Portfolio and Collar solely for investment purposes, and its purchase and sale of the Portfolio and its purchase and unwind of the Collar did not constitute a trade or business.
12. TTP received and applied to its sole and exclusive benefit the proceeds from the sale of the Calls, and was solely liable for any obligations under the Calls upon exercise.
13. On October 22, 2001, TAC transferred all of its Class B common shares of FFWW stock to TTP as a capital contribution. This contribution was a bona fide contribution to TTP's capital and in proportion to TAC's interest in TTP.
14. The members of TTP have always held at least a one percent membership interest.
15. TAC timely elected to be treated as an S corporation for U.S. federal income tax purposes beginning October 1, 2001.
16. Based solely on the representations received from Barnville (attached as Exhibit A), the following representations are made:
  - i. Barnville was an initial member of TTP, a Delaware limited liability company.
  - ii. During the period that Barnville was a member of TTP, TTP did not make an election for U.S. Federal income tax purposes to be treated as a corporation.
  - iii. On September 21, 2001, Barnville made a capital contribution to TTP of a certain portion of its positions in several technology stocks set forth in Schedule A of Exhibit A (the "Portfolio") in exchange for a ninety-nine percent membership interest in TTP.
  - iv. Barnville contributed the Portfolio to form TTP as a partnership with the intention of making a profit from the sale of interests in TTP.
  - v. On September 24, 2001, Barnville sold its ninety-nine percent membership interest in TTP to TAC for \$768,784,235. Barnville is not related to TAC.
  - vi. At the time of TAC's purchase of Barnville's interest in TTP, the fair market value of the Portfolio was significantly lower than the acquisition cost of the

Portfolio as recorded in Barnville's books and records. Schedule A of Exhibit A sets forth the acquisition cost of the Portfolio as recorded on the books and records of Barnville.

- vii. During the period that Barnville was a member of TTP, TTP did not have a U.S. Internal Revenue Code section 754 election in effect.
- viii. Barnville at all times since the formation of TTP had a ninety-nine percent interest in TTP prior to its sale to TAC.
- ix. Barnville's transfer of the Portfolio to TTP did not result in the receipt by Barnville of money or other consideration (other than its membership interest in TTP) including debt obligations.
- x. Any loss booked on the sale of Barnville's interest in TTP to TAC was not subject to U.S. tax provisions and was not reported on any U.S. tax return for U.S. Federal income tax purposes.

IN WITNESS WHEREOF, I have signed this Representation Certificate this 11<sup>th</sup> day of October, 2002.

Mueen Jadia  
Witness

[Signature]  
Titanium Acquisition Corporation  
by Haim Saban, President

**Barnville Limited**  
**Representation Certificate**

Barnville Limited ("Barnville") hereby certifies to Titanium Acquisition Corporation ("TAC") that the following representations are true, correct and complete to the best of its knowledge.

1. Barnville was an initial member of Titanium Trading Partners LLC ("TTP"), a Delaware limited liability company.
2. During the period that Barnville was a member of TTP, TTP did not make an election for U.S. Federal income tax purposes to be treated as a corporation.
3. On September 21, 2001, Barnville made a capital contribution to TTP of a certain portion of its positions in several technology stocks set forth in Schedule A attached hereto (the "Portfolio") in exchange for a ninety-nine percent membership interest in TTP.
4. Barnville contributed the Portfolio to form TTP as a partnership with the intention of making a profit from the sale of interests in TTP.
5. On September 24, 2001, Barnville sold its ninety-nine percent membership interest in TTP to TAC for \$768,784,235. Barnville is not related to TAC.
6. At the time of TAC's purchase of Barnville's interest in TTP, the fair market value of the Portfolio was significantly lower than the acquisition cost of the Portfolio as recorded in Barnville's books and records. Schedule A attached hereto sets forth the acquisition cost of the portfolio as recorded on the books and records of Barnville.
7. During the period that Barnville was a member of TTP, TTP did not have a US Internal Revenue Code section 754 election in effect.
8. Barnville at all times since the formation of TTP had a ninety-nine percent interest in TTP prior to its sale to TAC.

**KS-00001188**

9. Barnville's transfer of the Portfolio to TTP did not result in the receipt by Barnville of money or other consideration (other than its membership interest in TTP) including debt obligations.
10. Any loss booked on the sale of Barnville's interest in TTP to TAC was not subject to U.S. tax provisions and was not reported on any U.S. tax return for U.S. Federal income tax purposes.

Barnville signed this Representation Certificate this 11<sup>th</sup> day of OCTOBER, 2002.



Barnville Limited  
by A. NICHOLSON  
DIRECTOR



SCHEDULE A

<u>Ticker</u>	<u>Shares</u>	<u>Acquisition Price Per Share</u>	<u>Acquisition Price</u>	<u>Date Acquired</u>
ADBE	1,728,000	57.84	99,954,000	6/6/2000
ADP	1,733,000	57.69	99,972,438	6/6/2000
AMAT	700,000	89.31	62,518,750	6/6/2000
AOL	1,000,000	82.75	82,750,000	1/3/2000
AOL	1,649,485	60.63	100,000,028	2/28/2000
BGEN	953,516	104.88	99,999,991	2/28/2000
CCU	973,596	87.75	85,433,049	1/3/2000
CSCO	2,000,000	12.55	25,101,200	9/21/2001
DELL	2,238,000	44.69	100,010,625	6/6/2000
EBAY	250,000	72.53	18,132,813	2/28/2000
EBAY	1,393,000	71.81	100,034,813	6/6/2000
EBAY	1,538,462	69.94	107,592,340	12/28/1999
INTC	1,150,000	21.48	24,706,600	9/21/2001
MSFT	745,500	52.14	38,866,717	9/21/2001
NOK	900,000	55.63	50,062,500	6/6/2000
ORCL	900,000	38.53	34,678,125	6/6/2000
PCS	1,756,000	56.94	99,982,250	6/6/2000
Q	2,339,181	42.12	98,526,304	1/3/2000
QCOM	575,000	143.25	82,368,750	2/28/2000
XLNX	1,000,000	70.25	70,250,000	2/28/2000
<b>Totals:</b>	<b>25,522,740</b>		<b>\$1,480,941,293</b>	

**Titanium Trading Partners LLC Representation Certificate**  
**for Titanium Trading Partners LLC Federal Income Tax Opinion**

In connection with the opinion to be delivered by Bryan Cave LLP to Haim Saban, in his capacity as President of Titanium Acquisition Corporation ("TAC") which is the managing member of Titanium Trading Partners LLP ("TTP"), and recognizing (1) that Bryan Cave LLP will rely upon the following representations in issuing its tax opinion ("Tax Opinion") to TTP, and (2) that the tax opinions set forth therein may not be accurate if any of the following representations are not accurate in all material respects, Haim Saban as President of TAC, the managing member of TTP, hereby certifies that the following representations are true, correct and complete to the best of his knowledge.

Unless otherwise specified, all capitalized terms used herein without definition shall have the meanings assigned to them in the Tax Opinion.

1. On September 24, 2001, TTP received contributions from TAC and CS in the amounts of \$31,208,373 and \$315,236, respectively. These cash contributions were bona fide contributions to TTP's capital and in proportion to TAC's and CS' interests in TTP, and were used by TTP to purchase the Collar. TTP's net cost of the Collar was \$31,523,305.90.
2. TTP was technically terminated for Federal income tax purposes on September 24, 2001, when Barnville and Euram sold their TTP membership interests to TAC and CS, respectively, and TTP's partnership taxable year closed on September 24, 2001.
3. On September 25, 2001, TTP was required to change its taxable year to the fiscal year ending September 30, which was the same taxable year as TAC, its majority interest partner.
4. On October 22, 2001, TTP received Class B common shares of FFWW stock from TAC and Glen Gale as capital contributions. These contributions were bona fide contributions to TTP's capital and in proportion to TAC's and Glen Gale's interests in TTP.
5. TTP is not, and has not, engaged in the trade or business of buying and selling options. All options purchased or sold by TTP were for investment purposes.
6. TTP intended to hold the Portfolio and Collar solely for investment purposes with the expectation of making a potential short-term economic profit by taking advantage of the then current volatility of the market.
7. The Collar remained in place until the Unwind Event occurred on November 12, 2001, when 75% of the Collar was terminated, and the remaining 25% Collar was terminated on November 13, 2001.
8. When TTP sold the Portfolio, it was holding the stocks comprising the Portfolio as capital assets.

NY01DOCS311843.3

Permanent Subcommittee on Investigations <b>EXHIBIT #63e</b>
---

KS-00001191

9. There is not, nor has there ever been, a plan for any member of TTP to hold less than a one percent membership interest.
10. No member of TTP is substantially protected from risk of loss from TTP's activities.
11. All property contributed to TTP is owned by TTP, and no member has retained the benefits and burdens of ownership of the contributed property.
12. No property has been "nominally" contributed to TTP by any member.
13. The proceeds from the sale of the FFWW stock by TTP have remained in TTP and have been used and invested in stocks and securities as part of the TTP Activity.
14. TTP engaged Quellos to provide financial services and advice, and TTP requested Quellos to prepare information, including schedules, pertaining to the Portfolio and Collar.

IN WITNESS WHEREOF, I have signed this Representation Certificate this 11 day of October, 2002.

Haim Saban  
Witness

Haim Saban  
Titanium Trading Partners LLC  
by Haim Saban as President of TAC,  
the managing member of TTP

07-11-06 11:36am From-

T-201 P.02/02 F-157

**BICKEL & BREWER**  
ATTORNEYS AND COUNSELORS  
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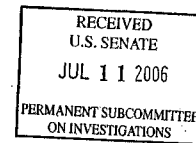
www.bickelbrewer.com

767 FIFTH AVENUE  
50th FLOOR  
NEW YORK, NEW YORK 10153  
(212) 489-1400

July 11, 2006

VIA TELECOPY AND ELECTRONIC MAIL

Ray Shepherd, Esq.  
Mark D. Nelson, Esq.  
Permanent Subcommittee of Investigations  
199 Russell Building  
Washington, D.C. 20510



Re: *Permanent Subcommittee on Investigations' Subpoenas and Notice of Senate Depositions, dated June 30, 2006, to Charles Wyly and Sam Wyly*

Gentlemen:

As you know, we have made considerable efforts to accommodate the Subcommittee Staff and respond to its requests for information. However, in light of the other pending investigations, of which you are aware, our clients have no choice but to decline the Subcommittee's request for testimony at this time. Please be advised that should our clients be compelled to testify at any deposition or proceeding, they will exercise the rights afforded to them under the Bill of Rights, including their Fourth Amendment right of privacy and their Fifth Amendment right against self-incrimination. Of course, we ask that no negative inference be drawn from the exercise of such privileges.

Considering the foregoing, this letter confirms that our clients will not be traveling to Washington, D.C. this week. Thank you for your courtesy and consideration.

Sincerely,

*William A. Brewer III*  
William A. Brewer III

cc: Elise J. Bean, Esq.  
Robert L. Roach, Esq.

5108857.6  
1993-01

Permanent Subcommittee on Investigations  
**EXHIBIT #64**

07-25-2006 05:41pm From:

**BICKEL & BREWER**  
 ATTORNEYS AND COUNSELORS  
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 1717 MAIN STREET  
 DALLAS, TEXAS 75201  
 (214) 653-4000

July 25, 2006

Via Facsimile & U.S. Mail

Hon. Norm Coleman  
*Chairman*  
 Senate Permanent Subcommittee on Investigations  
 199 Russell Senate Office Building  
 Washington, DC 20510

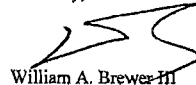
Hon. Carl Levin  
*Ranking Minority Member*  
 Senate Permanent Subcommittee on Investigations  
 199 Russell Senate Office Building  
 Washington, DC 20510

*Re: Hearing on Role of Professional Firms and Advisors in the Development and  
 Implementation of Financial Transactions and Asset Protection Structures Using  
 Offshore Entities and Jurisdictions).*

Gentlemen:

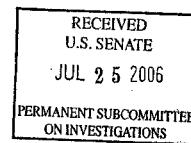
This letter responds to the invitation you extended to our clients Messrs. Sam and Charles Wyly (the "Wyls"), to appear before the Senate Permanent Subcommittee on Investigations (the "Committee") on August 1, 2006. Regretfully, for the reasons set forth in our letter of July 11, 2006 to the Committee, the Wyls respectfully decline your invitation.

Sincerely,



William A. Brewer III

cc: Mark D. Nelson, Esq., *Counsel for the Majority* (via facsimile and e-mail)  
 Robert L. Roach, Esq., *Counsel for the Minority* (via facsimile and e-mail)



RESPONSES TO SUPPLEMENTAL QUESTIONS FOR THE RECORD  
SUBMITTED BY  
**SENATOR FRANK LAUTENBERG**  
to  
**THE HONORABLE MARK EVERSON**  
Commissioner  
Internal Revenue Service

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
HEARING ON  
***TAX HAVEN ABUSES:  
THE ENABLERS, THE TOOLS & SECRECY***  
August 1, 2006

**Background**

The auditors in the IRS' Estate and Gift Tax Division, who are about to be downsized, are part of the so-called "excepted service," meaning they were not hired through the normal "competitive" civil service process. As a result, while the enforcement dollars will be transferred to the high-income division, the actual people will lose their positions and have to reapply at the IRS for a job.

One proposal involves making an exception to the law so that these personnel can be transferred over to the high-income division.

1. **Would you support changing the law so that these auditors will simply be able to move over to the high-income division without having to re-apply to the agency?**

**Response:** At the present time, there is no pending legislative proposal to change the law allowing the displaced E&G attorneys to move over to other jobs without having to reapply. The introduction of any such proposal would require approval by the Department of Treasury. We would support discussions with Treasury regarding such a proposal.

2. **Are the auditors in the Estate Tax section going to lose their jobs or simply be transferred to the "high income" division?**

**Response:** Employees, including attorneys, in excepted service positions are not eligible for reassignment to competitive service positions. Therefore, the E&G attorneys are being offered an opportunity to elect early out or buyout options. After the window closes and we have information about how many employees are making these elections, we will continue our evaluation of next steps to mitigate the impact of employees affected by the reorganization. It is the savings from this reorganization that we will apply to hiring in other areas.

**Background**

The IRS brings in more than seven dollars for each dollar spent on enforcement, yet the IRS budget has not increased in inflation adjusted terms since 1996. In some divisions returns are much higher, as much as 30-to-1 for the Estate and Gift Tax division and 40-to-1 for the high-income division.

There is clearly substantial room to improve on our \$300 billion "tax gap" (the difference between taxes paid and taxes owed).

**1. How much could we close the tax gap for each additional dollar we give the IRS in enforcement funding?**

**Response:** Enforcement activities help to close the tax gap in two ways:

- (1) The direct effect of enforcement refers to the revenue collected from taxpayers contacted by the IRS in connection with the tax years addressed by the enforcement contact. The tax collected in this way recovers a portion of the gross tax gap for prior years. The direct cost-effectiveness of the various enforcement programs at the margin varies widely. Generally, more labor-intensive enforcement efforts have a smaller direct return on investment than more capital-intensive enforcement efforts. Averaged across all programs, the long-term direct effect is on the order of \$4 for every dollar spent (long-term generally means 3 or more years after the investment in enforcement activities is started, because it takes some amount of time for additional employees to become fully effective).
- (2) The indirect effect of enforcement is the additional voluntary compliance induced in the general population as a result of the enforcement action. This includes the response among those who are not contacted (but who hear about the enforcement from others or from the media) and the subsequent-year response from those who received an enforcement contact in a prior year. The additional tax paid voluntarily in this way reduces the gross tax gap in *future* tax years. Although the IRS has not attempted to estimate the indirect effect of enforcement, others have. These estimates vary widely, with some estimates of indirect effects being 10 times the direct effect. It is important to recognize that these returns will not be realized immediately, but rather will accrue over a period of years as enforcement efforts ramp up and as compliance behavior changes in response to the increased enforcement.

As you know the administration has supported increased investments in IRS enforcement resources. We appreciate the support Congress provided in increase IRS enforcement substantially in FY 2006. However, it is also important to note that we cannot reduce the tax gap to acceptable levels through enforcement alone. As enforcement efforts increase, marginal returns will drop. Instead, the

Administration is looking to a combination of targeted tax law changes, enforcement and productivity enhancing technology investments to make progress in this area.

### **Background**

After adjusting for inflation, the IRS budget for taxpayer service has fallen sharply under President Bush, from \$4 billion in 2002 to a \$3.3 billion request for 2007. This budget funds things like answering taxpayers' questions on the telephone and providing in person assistance for those that need help filling out their taxes.

#### **1. How much does money spent on taxpayer service improve voluntary compliance?**

**Response:** We do not know the quantitative impact of service upon business results. However, through the Taxpayer Assistance Blueprint (TAB) initiative, the IRS will attempt to evaluate the impact of service on voluntary compliance. The TAB initiative, conducted jointly with the National Taxpayer Advocate and the IRS Oversight Board, will create a five-year plan that outlines what services the IRS should provide, as well as how to improve services for taxpayers by leveraging reliable data on taxpayer and partner needs and preferences.

The TAB document will be developed and delivered in two phases. The TAB Phase 1 report, which was delivered to Congress on April 25, 2006, provides a baseline of current IRS services, taxpayer and partner needs and preferences, service industry benchmarking, and strategic service directions. The TAB Phase 2 report, which will be delivered to Congress in October 2006, will validate the service recommendations through extensive primary research with taxpayers and will identify key operational and resource delivery requirements. Phase 2 research considerations will include questions such as the cost of service delivery by taxpayer segment and channel and the impact of service on compliance.

#### **2. Does it make sense to be shifting money from service to enforcement as we have been doing?**

**Response:** The FY2007 IRS budget request continues to support the balance between Taxpayer Service and Enforcement, despite an increase in enforcement funding since FY 2002. Savings to the Taxpayer Service budget have been achieved as the result of the efficiencies realized through increased electronic filing and other e-services options (such as [www.irs.gov](http://www.irs.gov) – one of the most heavily visited sites on the internet). Electronic filing is fast, easy, less prone to error than paper-filed returns, and reduces tax administration costs. Improved telephone automated features, such as the automated features found at 1-800-829-1040 to answer tax



questions have also improved over the years, resulting in equal or better delivery of service to the taxpayer.

In FY 2002, the Internal Revenue Service spent \$3.557 billion on taxpayer services. The FY 2007 request of \$3.448 billion is further supplemented by \$135 million in new user fees, for a total of \$3.583 billion available for taxpayer service. Savings from implementing electronic services and other program efficiencies (including the costs of ramping down submission processing sites to accommodate the reduction of paper processing) have been reinvested into taxpayer service to further improve IRS programs and processes or reduced from the base via additional budget reductions.

The reduction of taxpayer service funding attributed to efficiency savings as proposed in the IRS' FY 2006 and FY 2007 President's Budget has not impacted the delivery of service, as highlighted in FY 2005 and FY 2006 (through June) achievements and performance results:

- In FY 2005, the IRS' customer assistance call centers answered 59.1 million calls. The IRS exceeded its FY 2005 target of 82 percent toll-free telephone level of service and improved its toll-free tax law accuracy rate to 89 percent, an increase from 80 percent in FY 2004. As of June 2006, the Customer Service Representative level of service, formerly called toll-free telephone level of service, was 81.2 percent, but is expect to reach the target level of 82 percent. The toll-free tax law and accounts customer accuracy rates through June 2006 are at or slightly ahead of plan, at 90.6 percent and 93.1 percent, respectively. Customer Accounts Resolved (Adjustments) accuracy performance is at 87.8 percent, ahead of target and 2005 levels.
- In addition to maintaining toll-free level of phone service, the IRS provided and staffed toll-free telephone assistance lines for hurricane victims. The IRS also implemented numerous tax law changes to help the victims of hurricanes Katrina and Rita, businesses located in the disaster areas, and individuals donating to charities to support the victims.

Through June 2006, the taxpayer self-assistance rate was 52 percent, exceeding the FY 2006 target of 45.7 percent. The IRS introduced several new and improved features for [www.irs.gov](http://www.irs.gov) in 2006, including the 1040 Central, Free File, Alternative Minimum Tax (AMT) Assistant, Earned Income Tax Credit (EITC) Assistant, "Where's My Refund?", and electronic application and receipt of Employer Identification Number (EIN).

- In 2005, the IRS exceeded the 50 percent returns filed electronically milestone and met the 51 percent target. Through June 2006, 55 percent of individual returns were filed electronically, which was slightly above the target of 54.3 percent. The IRS received 130.6 million total individual returns as of June 2006,

compared to 128.6 million returns in June of 2005. Of the total returns filed, 71.8 million were filed electronically, compared to 67.3 million electronic returns through this same period last year. The most significant increase in electronic filing came from home computer filing, which increased 18.7 percent.

- In 2005, over 62,000 training volunteers at 14,000 locations across the country prepared more than 2.1 million tax returns, an 80 percent increase since 2001 (the year prior to the implementation of the community partnership model). In FY 2005 the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) volunteers e-filed more than 77 percent of these returns, an increase in volume of 130 percent over 2001. In FY 2006, the IRS volunteers filed approximately 2.3 million returns, a 7.5 percent increase over FY 2005.

# # #

1317

RESPONSES TO SUPPLEMENTAL QUESTION FOR THE RECORD  
SUBMITTED BY

SENATOR NORM COLEMAN

and

SENATOR CARL LEVIN

to

MICHAEL CONN

Private Bank Northwest Region President  
Bank of America

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
HEARING ON

*TAX HAVEN ABUSES:  
THE ENABLERS, THE TOOLS & SECRECY*

August 1, 2006

**Q.** Banks and securities firms that pay interest, dividends, or capital gains on an account held by a U.S. person must report that account income to the IRS on a 1099 form. All U.S. taxpayers understand that the 1099 form will be sent to the IRS and can be cross-checked against their tax returns to ensure all account income has been reported. Currently, 1099s have to be filed only for U.S. account holders and a financial institution determines who is a U.S. account holder by asking each account holder to certify their status. U.S. account holders provide the financial institution with a W-9 form and the foreign account holders provide a W-8 form. The Wyly related offshore entities all filed W-8BEN forms, claiming they were foreign account holders who beneficially owned the account income, even though all of them were taking direction from the Wyllys.

If Bank of America knows that an offshore trust or shell corporation is controlled by a U.S. person, is it required to file a 1099 for that account with respect to the U.S. person who is the real beneficial owner of the account assets?

[RESPONSES ATTACHED]

#

Permanent Subcommittee on Investigations

EXHIBIT #65b

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FAX: (973) 364-9960

September 15, 2006

**BY E-MAIL**

Hon. Norm Coleman, Chairman  
Hon. Carl Levin, Ranking Minority Member  
United States Senate  
Permanent Subcommittee on Investigations  
Washington, DC 20510-6250

**Subcommittee's Supplemental Question dated August 16, 2006**

Dear Senators Coleman and Levin:

This letter responds to the Subcommittee's August 16, 2006 letter requesting that Bank of America (the "Bank") answer the following supplemental question for the record of the August 1, 2006 hearing.

"Q: If Bank of America knows that an offshore trust or shell corporation is controlled by a U.S. person, is it required to file a 1099 for that account with respect to the U.S. person who is the real beneficial owner of the account assets?"

At the outset, we note that the preamble to the supplemental question, if it was applied in the context of the subject matter of the hearing, assumes facts that the Bank was not aware of at the time that it held the accounts. Specifically, Bank of America was not aware that the offshore entities took "direction from the Wyllys." We, of course, made that point when we testified. As to the question itself, terms are included that are not further defined and that, depending on the facts of a particular account, could have legal significance that would affect the Bank's response.<sup>1</sup> Without applying the question to a particular set of facts in a given account relationship, we cannot provide a definitive answer.

<sup>1</sup> For example, a different reporting regime applies depending upon the type of 1099 form at issue.

## ZEICHNER ELLMAN &amp; KRAUSE LLP

Hon. Norm Coleman, Chairman  
Hon. Carl Levin, Ranking Minority Member  
September 15, 2006  
Page 2

With respect to the accounts maintained at the Bank that were the subject of the above-referenced hearing, the foreign entity account holders provided W-8BENs which identified these entities as the beneficial owners of their income and provided supporting documentation. Given what the Bank knew about the accounts at the time, it was appropriate for the Bank to rely on the forms filled out by the foreign entity account holders which listed themselves as the beneficial owners because of the way in which the IRS rules define beneficial owner in this context and the way in which the IRS rules allow reliance on adequate documentation. A beneficial owner, for information reporting purposes, is the owner of the income and not any individual who may direct some of such corporation's activity. As the rules state: "A person shall be treated as the owner of the income to the extent that it is required under U.S. tax principles to include the amount paid in gross income under section 61..." Treas. Reg. Sec. 1.1441-1(c)(6). Under U.S. tax principles, a corporation (including a foreign corporation), and not its shareholders, is required to include, among other things, interest, dividends and gains and losses in its gross income. The IRS rules further provide that a payor may rely on adequate documentation provided by the beneficial owner unless the payor is put on notice by the IRS that withholding is required.

If, however, the Bank was put on notice that a U.S. person "controlled" a "shell corporation" or an offshore trust without a legitimate purpose, the Bank would either not open such an account or would close the account upon receiving such notice. To be clear, the Bank was not put on notice at the time that this fact pattern may have applied to the accounts at issue.

Please let us know if the Subcommittee would like the Bank to provide any additional information.

Respectfully,

*David Chenkin / BC*

David B. Chenkin

DBC:cla



September 6, 2006

*By Hand Delivery*

Hon. Norman Coleman, Chairman  
Permanent Subcommittee on Investigations  
Committee on Governmental Affairs  
United States Senate  
SR-100 Russell Senate Office Building  
Washington, D.C. 20510-6262

Hon. Carl Levin, Ranking Minority Member  
Permanent Subcommittee on Investigations  
Committee on Governmental Affairs  
United States Senate  
SR-193 Russell Senate Office Building  
Washington, D.C. 20510-6262

Dear Chairman Coleman and Ranking Member Levin:

Thank you for your letter of August 16, 2006 detailing supplemental questions for HSBC Bank USA, N.A. ("HSBC"), related to the Permanent Subcommittee on Investigation's August 1, 2006 hearing titled, *Tax Haven Abuses: The Enablers, The Tools & Secrecy*. The following answers are provided answers to your supplemental questions on behalf of HSBC.

**Question #1:**

You were the Chief Credit Officer at HSBC when the \$800 million loan to Mr. Haim Saban was approved. Exh. 60b (attached) is an untitled HSBC memorandum that addresses the Saban transaction. At the end of page 2, this memorandum states:

The deferral of \$700 - \$750 million for 5 to 10 years is the economic benefit that provides Quellos with its fee. Assuming a risk free rate on triple tax exempt municipal bonds of 3.7% compounded annually for five years on \$700 million, Quellos would save Saban \$140 million after tax over five years.

The background section of the final credit memo, Exh. 60a (attached), states:

STRICTLY CONFIDENTIAL – NOT FOR CIRCULATION / SUBCOMMITTEE MEMBERS AND STAFF ONLY

HSBC Bank USA, National Association  
452 Fifth Avenue, New York, NY 10018

Permanent Subcommittee on Investigations  
**EXHIBIT #65c**

Hon. Norman Coleman, Chairman  
Hon. Carl Levin, Ranking Minority Member  
September 6, 2006

At the suggestion of his attorneys and Quellos, Mr. Saban will be purchasing an offshore entity, Titanium Trading Partners Inc., which had substantial capital losses which he can use to offset his capital gains from the sale of Fox Family News.

(a) Did HSBC know that this was a tax driven transaction?

**Answer:** As several of my colleagues previously indicated to the Subcommittee's staff, bank personnel were told by Mr. Saban's advisors that there were dual purposes underlying the transaction—a tax purpose and an investment purpose.

(b) Did HSBC know that the tax related benefits involved in this transaction were very large?

**Answer:** Bank personnel understood that Mr. Saban's advisors had identified a legal way for Mr. Saban to achieve significant tax savings via a transaction that would offset expected gains from his sale of Fox Family Worldwide. The Bank was not aware of the exact nature or extent of Mr. Saban's prospective tax savings.

(c) Did any bank personnel question why HSBC was prepared to loan \$800 million to support a tax driven transaction involving offshore corporations? If not, why not?

**Answer:** Because of the size of the Saban transaction, it was subject to multiple levels of review and scrutiny within HSBC. HSBC understood Mr. Saban to be supported by sophisticated advisors, including Quellos and a leading law firm. HSBC also understood that the transaction would be supported by a formal tax opinion from a leading law firm. Additionally, Mr. Saban and other parties to the transaction signed statements prior to closing affirming that the transaction was appropriate and proper.

**Question #2:**

Who did HSBC rely on for representations of material facts and elements of the transaction?

Hon. Norman Coleman, Chairman  
Hon. Carl Levin, Ranking Minority Member  
September 6, 2006

**Answer:** HSBC primarily relied on its client, Mr. Haim Saban, and Mr. Saban's representatives, including Quellos, as well as counter parties and their agents, including Euram.

(a) Did the bank conduct any due diligence to understand or verify facts and elements of the transaction? If yes, please describe the due diligence undertaken.

**Answer:** Consistent with HSBC policies at the time, I understand that the Private Bank took steps to determine that HSBC's transactions were being entered into with reputable individuals and entities. I am told that this included, among other things, personal meetings with Mr. Saban and his representatives, and consultations with, and document requests from, a number of other involved entities. HSBC also insisted that its counsel be permitted to review the tax opinion from the leading U.S. law firm before the transactions were executed. HSBC also took steps to determine that the bank itself had no "tax shelter registration" or other tax reporting obligations relating to the transactions.

(b) Who provided HSBC with information about Jackstones and Barnville, the Isle of Man entities involved in the transaction?

**Answer:** According to the Relationship Manager handling the transaction, information was provided by representatives of Quellos and Euram Bank.

(c) Does the bank feel it received accurate information about Jackstones and Barnville?

**Answer:** No; HSBC representatives were advised by Quellos that these entities were owned and controlled by Euram and that they had acquired actual stocks from investors that had incurred losses. Based on the PSI report both of these assertions appear to be inaccurate. Email extracts included in the PSI Report also appear to indicate that there was some desire on the part of Quellos to conceal the beneficial ownership of these two companies. As a result we appear to have been misinformed or possibly misled as to the ownership and true operating characteristics of these two companies.

**Question #3:**



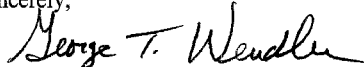
Hon. Norman Coleman, Chairman  
 Hon. Carl Levin, Ranking Minority Member  
 September 6, 2006

In your statement, you said that the bank would not provide support for POINT type transactions today. Your statement outlines the improvements in the bank review process. Could you specify what exactly it is about the POINT transaction that would cause the bank to deny assistance today?

**Answer:** HSBC has enhanced its policies and procedures regarding structured transactions and "Know Your Customer" requirements since 2001. Current policies specifically provide that "transactions must have significant commercial substance and will result in tangible commercial benefits to the participants". HSBC does not engage in artificial transactions whose main purpose is to take tax advantage. Further, when analyzing the nature of a particular transaction, current policy specifically provides that decision makers must give the highest priority to the bank's reputation, without regard to the profitability of the transaction to the bank.

Even in the absence of the intervening change in Internal Revenue Code Section 743 (which repeals the statutory premise for the POINT transaction), the bank believes that today the POINT transaction would fall into the category of tax-driven transactions that are prohibited under its current policies. Relevant aspects of the POINT transaction in this analysis would be the claiming of stock market losses that were economically incurred by another, tax-indifferent party; and the substantial purpose to shelter taxable gains from stock sales.

Sincerely,



George T. Wendler  
 Senior Executive Vice President  
 HSBC Bank USA, N.A.

1324



Note  
22 Aug 2001 10:25

From:	George Wendler	Tel:	(1 212) 525 6065
Title:	Senior Exec Vice President	Location:	452 5th Ave, Floor 03
WorkGroup:	RNB Domestic Lending Support	Mail Size:	5770


To: Robert Treanor, et al

Subject: NON-CIB GROUP: HAIM SABAN FAMILY GROUP

fyl.....

*DDP 8/22/01*

Forwarded by George Wendler/HBUS/HSBC on 08/22/2001 10:25 AM

 Crl SHUTTLE@HSBC  
22 Aug 2001 15:20

Sent by: Lindsey KELLOW@HSBC

To: George Wendler  
cc: Iain Stewart, et al

Our Ref: GHQ CRF 011680 Your Ref:  
Subject: NON-CIB GROUP: HAIM SABAN FAMILY GROUP

Dear George

**NON-CIB GROUP: HAIM SABAN FAMILY GROUP**  
**BORROWER: SILVERLIGHT ENTERPRISES LP - GRADE 2**

We concur, subject to your approval and the points raised by Russell Schreiber in his note dated 22 August 2001. Ideally we would wish that Saban guarantee the transaction from the outset; this should be attempted albeit on a best endeavours basis.

Yours sincerely

P L Hargreaves  
Group Financial Risk Controller

pkb/ljk

Strictly Confidential  
Not For Circulation  
Subcommittee Members & Staff Only

HUI 0000720

Permanent Subcommittee on Investigations  
**EXHIBIT #60a**

## Appendices

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VI	Stock Basket Liquidation	.....	page 18

I. Background:

Quellos is a financial and tax advisor specializing in families with net worth in excess of \$200 million. HSBC have been working with Quellos for the past few years. Quellos handles, as an example, the financial matters of James D. Wolfensohn, President of the World Bank and a HSBC Private Client. Quellos has been advising Mr. Saban for the past three years, especially in tax planning.

Haim Saban is well known for introducing Power Rangers to the US entertainment market. He is originally from Egypt and immigrated to Israel, where he became a concert promoter. He lost a lot of money after promoting a Japanese Band to tour Israel, which coincided with the Yom Kippur War. Subsequently, he moved to France where he started producing theme songs for TV shows. In 1980, Saban moved to Los Angeles and began creating sound tracks for cartoons and producing low budget animation cartoons. He later met up with a Japanese friend from the ill-fated Israel tour who became successful in the Japanese children's serial programs. Through this connection, Saban started Saban Entertainment Inc. and in 1993 began to produce a series of children's show "Mighty Morphin Power Rangers" which became an overnight success drawing over 4 million viewers daily and the highest rated weekday show in most key children's demographics. Saban made \$70 million in revenue for the first year and \$10 million in pretax profit. With the enormous profit obtained from the Power Rangers programs and licensing of consumer products, Saban acquired 49.5% interest in Fox Family networks with News Corp as co-owner. Saban also has an agreement with News Corp., which gives him the option to sell his 49.5% ownership of Fox Family to News Corp. News Corp has three choices: a) to buy Saban's stake in cash, b) bring in a partner to buy Saban's stake or c) sell the entire operation. Saban has exercised his option recently and News Corp has decided to sell the entire network. A purchase agreement has been signed in which the network will be sold to Disney for \$ 5.3 billion (\$3.2 billion cash, assumption of debt \$2.1 billion).

Mr. Saban is expected to receive \$1.584 billion cash from the sales proceeds. As part of his investment program, to gain diversification and to minimize his capital gains tax, Mr. Saban has discussed with many tax consultants to seek expert advice. At the suggestion of his attorneys and Quellos, Mr. Saban will be purchasing an offshore entity, Titanium Trading Partners, Inc. which had substantial capital losses that he can use to offset his capital gains from the sale of FFW. To structure this transaction, Silverlight Enterprises L.P., a Saban family partnership will need to borrow \$730 million to purchase Titanium.

Quellos has come to HSBC to execute an arms length transaction. Quellos' stated criteria have been a "full service bank" and price. HSBC has competed successfully against Bank of America and UBS for this business.

As part of the approval of the deal, it is agreed that:

- both Haim Saban and Quellos will acknowledge that the transaction is an arms-length transaction.
- Saban counsel will acknowledge that this is an arms-length transaction.
- Our in-house counsel will opine that HSBC is acting at arms length and that HSBC is not a promoter of the transaction.
- HSBC's out-side counsel as chosen by legal, tentatively Ken Chin of Bingham Dana (previously known as Richards O'Neill), will provide an opinion of counsel stating that HSBC is not a promoter or sponsor of this transaction, rather an arms length counterparty.

The following is a draft of the disclaimer prepared by HBUS legal:

Relationship Between Parties

Each party represents to the other party on the date on which it enters into the Transaction that:

(A) **Non-Reliance.** Each party is acting for its own account, has made its own independent decision to enter into the Transaction and has determined that the Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party agrees and acknowledges that it is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into the Transaction and specifically agrees and acknowledges that information and explanation relating to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into that transaction. No communication (written or oral) with the Transaction shall be deemed to be an assurance or guarantee as to the expected results, benefits, outcomes or characteristics (economic, tax or otherwise) of the Transaction.

(B) **Assessment and Understanding.** Each party is capable of assessing the merits of and understands (on its own behalf or through independent professional advice), and accepts, the terms, conditions and risks of the Transaction. Each party is also capable of assuming and assumes, the risks of the Transaction.

(C) **Status of the Parties.** Neither party is acting as a fiduciary or an adviser to the other party in respect of the Transaction.

Barnville and Jackstones prior to deal:

- Barnville Limited and Jackstones Limited are Isle of Man companies each owned by a trust with mutually overlapping boards. Both Barnville and Jackstones are Investment Companies organized and managed by EURAM Advisors, an SFA regulated investment advisor. EURAM Advisors is a subsidiary of EURAM Bank AG from Vienna Austria. The Barnville and Jackstones boards are different enough so as not to be considered controlled by the same person or group of persons.
- Among other business lines, EURAM Advisors, using among other vehicles Barnville and Jackstones, creates and arranges transactions with institutional and high net-worth clients. Some existing clients cannot use losses for tax deductions. They warehouse these losses until a buyer is located who can take advantage of the situation. In this way, the clients can recoup some of the losses. Saban, through his advisor Quellos, is one such person.
- Once Barnville purchases an entity with the shares, Jackstones will short the stock holdings into the market. In this manner, the net position of Jackstones and Barnville are flat. To

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Permanent Subcommittee on Investigations  
**EXHIBIT #60b**

secure the short position, Barnville lends the shares that it owns through Titanium to Jackstones.

- At deal inception, Jackstones owns 99% of Titanium Trading Partners. EURAM Advisors owns 1% and is the managing member of Titanium Trading Partners. Titanium Trading Partners owns (through purchases of other entities) a portfolio of US shares with substantial tax losses.

Quellos and Saban:

- Quellos has developed Saban as a client over the past three to four years as Saban's profile has risen. Additionally, Saban is known to the US Domestic Private bank through other clients. Quellos is now Saban's principal financial and tax advisor.
- As an arms length transaction, HSBC does not have a complete knowledge of the tax treatment and is not Saban's tax advisor. However, according to information provided to Quellos, the losses in the stock basket in Titanium Trading mostly offset the gains in FFW. shares moved into Titanium Acquisitions and finally into Titanium Trading. Internally to Titanium Trading, there would be zero tax due at time of sale of FFW. The basis in Titanium Acquisitions will be the sum \$690 million paid for Acquisitions and the original basis of the FFW. Thus, tax is deferred until Titanium Acquisitions is liquidated. Once again, this is information provided to HSBC by Quellos. HSBC has never had a conversation about taxes with Saban.
- The deferral of ~\$700-750 million for 5 to 10 years is the economic benefit that provides Quellos with its fee. Assuming a risk free rate on triple tax exempt municipal bonds of 3.75% annually compounded money for five years on \$700 million, Quellos would save Saban ~\$140 million after tax over five years.

RESPONSES TO SUPPLEMENTAL QUESTION FOR THE RECORD  
SUBMITTED BY  
**SENATOR NORM COLEMAN**  
and  
**SENATOR CARL LEVIN**  
to  
**JEFFREY GREENSTEIN**  
Chief Executive Officer  
Quellos Group, LLC

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
HEARING ON  
*TAX HAVEN ABUSES:*  
*THE ENABLERS, THE TOOLS & SECRECY*  
August 1, 2006

For each POINT Strategy that was implemented, other than for Haim Saban and Robert Wood Johnson IV, provide the following information:

1. The amount of tax loss generated (i.e. the differential between the cost basis of the securities claimed by the trading partnership and the fair market value of the securities on the date Barnville contributed them to the trading partnership).
2. The amount of profit net of transaction costs and fees, but not considering tax benefits.
3. The identity of each entity that received fees and the amount received by each entity. If Quellos is aware of an entity or individual that received fees but does not know the amount of fees received, please identify the entity or individual.
4. The amount of profit projected to be earned through the long term covered warrant.
5. The amount of profit actually earned from the long term covered warrant.
6. The amount of time between the issuance of the long term covered warrant and the termination of the warrant.
7. The strike level (as a percentage of the execution price) of the put option and the call option components of the collar on the securities.

[RESPONSES ATTACHED]

#

Permanent Subcommittee on Investigations
<b>EXHIBIT #65d</b>

# MINTZ LEVIN

Jeffrey S. Robbins | 617 348 1722 | jsrobbins@mintz.com

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September 22, 2006

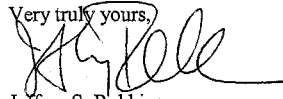
**BY HAND DELIVERY**

Senator Norm Coleman and Senator Carl Levin  
c/o Mary D. Robertson, Chief Clerk  
Permanent Subcommittee on Investigations  
Committee on Governmental Affairs  
United States Senate  
Russell Senate Office Building, Room 199  
Washington, D.C. 20510-6250

**Re: Supplemental Questions**

Dear Senators Coleman and Levin:

We received your letter dated August 16, 2006, in which seven follow-up questions were addressed to Mr. Jeffrey Greenstein, the Chief Executive Officer of the Quellos Group, LLC. I am informed that Mr. Greenstein does not have personal knowledge that would allow him to respond to your questions. He requested that counsel locate the requested information and respond to the questions. The responsive information is contained in the documents we sent to the staff prior to the hearing. For your convenience, attached are the documents relevant to each of your questions, broken down by transaction and question number.

Very truly yours,  
  
Jeffrey S. Robbins

JSR/jp

Enclosures

cc: Ms. Mary Robertson  
Mark Nelson, Esq.  
Laura Stuber, Esq.

LIT 1587662v.1

**Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.**

BOSTON | WASHINGTON | NEW YORK | STAMFORD | LOS ANGELES | PALO ALTO | SAN DIEGO | LONDON



**1**

**A**

**POINT - One Year Duration (Warrant Outstanding)**  
**One Year Profitability Analysis: Projected P&L**

Portfolio Cost Basis	\$ 242,336,563			
Portfolio Trade Price	120,523,513			
Approximate Initial Loss	\$ 121,813,050			
		Projected P&L (Stock Down 20%)	Projected P&L (Stock Flat)	Projected P&L (Stock Up 20%)
Stock sale proceeds	100,436,261			144,628,216
Portfolio value on SRV purchase date				(120,523,513)
Gain/(loss) on stock		(20,087,252)		24,104,703
Proceeds from sale of 100 day put				
Cost of long 100 day put		(17,765,335)		
Gain/(loss) on 100 day put			(17,765,335)	(17,765,335)
Cost of covering 100 day call				
Proceeds from short 100 day call				
Gain/(loss) on 100 day call		14,945,059	14,945,059	14,945,059
Warrant premium				
Interest on warrant premium (7% / 12 months)		58,611,000	58,611,000	58,611,000
Gain/(loss) on warrant		4,102,770	4,102,770	4,102,770
		62,713,770	62,713,770	62,713,770
Total trading gain/(loss)		39,806,242	59,893,494	83,998,197
Prepaid interest (includes 1% purchase premium)		(3,899,701)	(3,899,701)	(3,899,701)
Interest on bank loan used to settle seller financing (7% / 8.6 months)		(6,093,133)	(6,093,133)	(6,093,133)
Investment gain/(loss)		29,813,408	49,900,660	74,005,362
Quidra structuring & advisory fees		(2,400,000)	(2,400,000)	(2,400,000)
Net gain/(loss)		27,413,708	47,500,660	71,605,562
Return Analysis				
Periodic Return A - based on all costs (see assumption 4)	20.2%	35.0%		52.8%
Periodic Return B - based on initial cash requirements (see assumption 5)	300.6%	520.8%		785.1%

As assumptions: 1. The portfolio value fluctuates within the collar strike range for the first 100 days (i.e. both the short-term put option and short-term call option expire out-of-the-money).  
2. The above scenarios reflect the long-term movement in the equity portfolio value with funds borrowed from another source.  
3. The denominator used in the Return Analysis - Periodic Return A includes the purchase price of the SRV, the cost of the collar, prepaid interest, interest on the long-term bank loan, and structuring/advisory fees.  
4. The denominator used in the Return Analysis - Periodic Return B includes the cost of the collar, prepaid interest, and structuring/advisory fees.  
5. The warrant is still outstanding.

**B**

**POINT - One Year Duration (Warrant Outstanding)**  
**One Year Profitability Analysis: Projected P&L**

Portfolio Cost Basis	\$ 300,584,525			
Portfolio Trade Price	118,985,294			
Approximate Initial Loss	\$ 181,599,231			
		Projected P&L (Stock Down 25%)	Projected P&L (Stock Flat)	Projected P&L (Stock Up 25%)
Stock sale proceeds		99,154,412	118,985,294	142,782,383
Portfolio value on SPV purchase date		(118,985,294)	(118,985,294)	(118,985,294)
Gain/(loss) on stock		(19,830,882)	-	23,797,089
Proceeds from sale of 100 day put				
Cost of long 100 day put				
Gain/(loss) on 100 day put		(19,811,051)	(19,811,051)	(19,811,051)
Cost of covering 100 day call				
Proceeds from short 100 day call				
Gain/(loss) on 100 day call		16,241,493	16,241,493	16,241,493
Warrant premium				
Interest on warrant premium (7% / 12 months)		57,863,000	57,863,000	57,863,000
Gain/(loss) on warrant		4,050,410	4,050,410	4,050,410
		61,913,410	61,913,410	61,913,410
Total trading gain/(loss)		38,512,970	58,343,852	82,140,911
Prepaid interest (includes 1% purchase premium)		(5,230,441)	(5,230,441)	(5,230,441)
Interest on bank loan used to settle seller financing (7% / 8.6 months)		(6,015,368)	(6,015,368)	(6,015,368)
Investment gain/(loss)		27,267,161	47,098,043	70,895,102
Quadra structuring & advisory fees		(3,640,000)	(3,640,000)	(3,640,000)
Net gain/(loss)		23,627,161	43,458,043	67,255,102
Return Analysis				
Periodic Return A - based on all costs (see assumption 4)		17.2%	31.6%	48.9%
Periodic Return B - based on initial cash requirements (see assumption 5)		189.9%	349.3%	540.6%

Assumptions: 1. The portfolio value fluctuates within the collar strike range for the first 100 days (i.e. both the short-term put option and short-term call option expire out-of-the-money)

2. The above scenarios reflect the long-term movement in the equity portfolio value with fund borrowed from another source

3. The denominator used in the Return Analysis - Periodic Return A includes the purchase price of the SPV, the cost of the collar, prepaid interest, interest on the long-term bank loan, and structuring/advisory fees.

4. The denominator used in the Return Analysis - Periodic Return B includes the cost of the collar, prepaid interest, and structuring/advisory fees.

5. The warrant is still outstanding.

**C**



**D**



**Cobalt Point Basket/Collar Daily Price Tracking**  
Summary as of: December 5, 2001

Company	Ticker	Shares	Basic Price	Basic Amount	Initial Loss	Purchase Price	Purchase Amount	Closing Unwind Price	Total Proceeds	Current Gain (Loss)
Applied Materials, Inc.	AMAT	139,200	89.31	12,432,300	(6,877,271)	\$39.91	\$5,544,929		6,218,333	664,513
Cisco Systems, Inc.	CSCO	325,000	61.31	19,925,363	(13,716,625)	\$19.11	6,209,918		6,994,381	777,189
Dell Computer Corporation	DELL	295,000	51.56	15,210,200	(7,447,393)	\$26.31	7,762,807		8,676,885	916,388
Eli Lilly, Inc.	BBAY	200,000	72.53	14,506,250	(3,107,650)	\$56.99	11,398,800		14,314,574	2,917,340
First Data Corporation	FDX	123,500	54.56	6,736,469	(2,692,337)	\$71.50	8,830,806		9,330,713	530,874
Immunex	IMNX	133,100	63.38	8,462,942	(3,045,379)	\$25.65	3,413,362		3,436,679	24,136
Oracle Corporation	ORCL	272,300	38.53	10,492,059	(6,255,133)	\$15.56	4,236,906		4,074,743	(160,051)
Quest Communications International, I	Q	195,000	46.00	8,970,000	(6,727,300)	\$11.50	2,240,250		2,282,130	21,177
Qualcomm Incorporated	QCOM	103,200	143.25	14,783,400	(9,094,170)	\$55.13	5,689,250		6,310,616	622,199
Xilinx, Inc.	XLNX	321,000	70.25	22,540,250	(3,875,630)	\$38.22	4,628,250		4,833,529	222,852
		1,907,300		\$120,022,432	(\$60,058,334)		\$59,964,096.38		\$66,432,818.4	\$6,468,719

Trade Date: November 7, 2001

Estimated Consolidated P&L	
Stock sale proceeds	66,432,818
Trade value	(59,964,096)
Gain/(loss) on stock	6,468,719
Proceeds from sale of put	1,057,255
Cost of long put	(4,728,000)
Gain/(loss) on put	(3,670,745)
Cost of covering call	(3,532,796)
Proceeds from short call	2,237,464
Gain/(loss) on call	(1,295,331)
Total trading gain/(loss)	1,232,910
Structuring Fee	(1,000,000)
Net gain/(loss)	\$232,910
Net loss (gain) as % of initial loss	0.37%
Implied Annual Return	4.97%

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Qualtrics Custom Strategies LLC

2

A

**Estimated Consolidated P&L**

Stock sale proceeds	104,868,603	
Trade value	<u>(120,523,513)</u>	
Gain/(loss) on stock		(15,654,910)
Proceeds from sale of put	22,296,049	
Cost of long put	<u>(17,765,335)</u>	
Gain/(loss) on put		4,530,714
Cost of covering call	(4,723,441)	
Proceeds from short call	<u>14,945,059</u>	
Gain/(loss) on call		<u>10,221,618</u>
Total trading gain/(loss)		(902,578)
Prepaid Interest		(3,899,701)
Investment advisory fee		<u>(600,000)</u>
Net gain/(loss)		<u><u>(5,402,279)</u></u>
Net loss as % of initial loss		-4.43%

**Cash Flow**

Initial wire to Barnville account at Banc of America	(5,519,977)
Initial wire to Barnville account at Isle of Man	<u>(1,200,000)</u>
Total initial wires by MZ/Digital	(6,719,977)
Total proceeds from option payout to Torens	1,917,698
Advisory fees to QCS from Torens	<u>(600,000)</u>
Net cash available at Torens	1,317,698
Net cash outflow	<u><u>(5,402,279)</u></u>

**B**

**POINT*****Profitability Analysis***

Portfolio Cost Basis	\$	300,584,525
Portfolio Trade Price		<u>118,985,294</u>
Approximate Initial Loss	\$	181,599,232

	<u>Actual P&amp;L</u>	
Stock sale proceeds	143,077,148	
Portfolio value on SPV purchase date	<u>(118,985,294)</u>	
Gain/(loss) on stock		24,091,854
Proceeds from sale of put	8,057,972	
Cost of long put	<u>(19,811,051)</u>	
Gain/(loss) on put		(11,753,079)
Cost of covering call	(23,095,046)	
Proceeds from short call	<u>16,241,493</u>	
Gain/(loss) on call		<u>(6,853,553)</u>
Total trading gain/(loss)		5,485,221
Prepaid interest (includes 1% purchase premium)		<u>(5,230,441)</u>
Investment gain/(loss)		254,780
Quadra structuring & advisory fees		<u>(3,640,000)</u>
Net gain/(loss)		<u><u>(3,385,220)</u></u>
Return Analysis		
Periodic		-27.2%
Annualized		-95.1%

C

1346

Platinum

	A
1	<b>Platinum Trading Partners, LLC</b>
2	<b>Summary as of</b>
3	
4	
5	
6	Company
7	America Online
8	Clear Channel Communications
9	Conexant
10	3 Com Corporation
11	DoubleClick
12	Dell Computer Corp.
13	Infospace
14	JDS Uniphase
15	Lucent
16	QUALCOMM
17	
18	
19	
20	
21	
22	
23	<b><u>Estimated Consolidated P&amp;L</u></b>
24	Stock sale proceeds
25	Trade value
26	Gain/(loss) on stock
27	
28	Proceeds from sale of put
29	Cost of long put
30	Gain/(loss) on put
31	
32	Cost of covering call
33	Proceeds from short call
34	Gain/(loss) on call
35	
36	Total trading gain/(loss)
37	Structuring fees
38	HSBC commissions/execution slippage
39	Investor Financing
40	Quellos fees
41	Net gain/(loss)
42	
43	Net loss as % of initial loss
44	
45	<i>Actual Investment Return Analysis</i>



1347

Platinum

	B	C	D	F	G	H
1						
2	12/18/2000 (Termination Date)					
4						
5						
6	Ticker	Shares	Basis Price	Basis Amount		Initial Gain (Loss)
7	AOL	200,000	82.75	16,550,000		(8,648,000)
8	CCU	150,000	87.75	13,162,500		(5,990,625)
9	CNXT	325,000	96.81	31,464,063		(24,903,125)
10	COMS	350,000	79.06	27,671,875		(23,493,750)
11	DCLK	250,000	134.00	33,500,000		(30,234,375)
12	DELL	400,000	51.56	20,624,000		(12,724,000)
13	INSP	200,000	109.06	21,812,500		(19,687,500)
14	JDSU	110,000	126.50	13,915,000		(8,349,688)
15	LU	350,000	77.12	26,992,000		(21,698,250)
16	QCOM	75,000	179.31	13,448,250		(7,612,313)
17				<u>219,140,188</u>		<u>(163,341,625)</u>
18						
19						
20						
21						
22						
23						
24			58,118,438			
25			<u>(55,798,563)</u>			
26				2,319,875		
27						
28			5,739,000			
29	12.70%		<u>(7,086,417)</u>			
30				(1,347,417)		
31	(4,184,892)					
32			(4,039,000)			
33	5.20%		<u>2,901,525</u>			
34				(1,137,475)		
35						
36				(165,017)		
37				(1,620,000)		
38				(28,506)		
39				(191,239)		
40				-		
41				<u>(2,004,762)</u>		
42						
43				1.23%		
44						
45						

## Platinum

	I	J	L	M
1				
2				
4				
5		Purchase	Purchase	
6		Price	Amount	
7		39.51	7,902,000	
8		47.81	7,171,875	
9		20.19	6,560,938	
10		11.94	4,178,125	
11		13.06	3,265,625	
12		19.75	7,900,000	
13		10.63	2,125,000	
14		50.59	5,565,313	
15		15.13	5,293,750	
16		77.81	5,835,938	
17			55,798,563	
18				
19		Warrant/share	83,698	
20				
21			55,827,068	
22				
23	<b>Outside Basis</b>			
24	Additions:			
25		Purchase price		
26		Contribution of fixed income asset		
27		Prepaid fees		
28		Investor Financing		
29		Contribution for collar purchase		
30		Interest Income		
31		Additional contribution		
32		Total basis additions		
33	Reductions:			
34				
35		Loss on equity portfolio		
36		Loss on put option		
37		Loss on call option		
38		Misc. distribution		
39		Total basis reductions		
40	Net basis in SPV			
41				
42				
43	Notes:			
44		1. Any structuring fees can be included in outside basis.		
45				

Platinum

— = Redacted by the Permanent  
Subcommittee on Investigations

	N	O	P	Q	R	S	T	U
1								
2								
3								
4								
5								
6	Closing		Total					
7	Price		Proceeds	Gain (Loss)		Bought	Proceeds	
8	42.05		8,410,000	508,000		\$ 7,910,177.70	\$ 8,406,719.71	
9	53.25		7,987,500	815,625		\$ 7,171,857.80	\$ 7,986,108.74	
10	22.16		7,200,781	639,844		\$ 6,567,004.70	\$ 7,208,686.19	
11	9.33		3,264,844	(913,281)		\$ 4,186,998.60	\$ 3,260,742.76	
12	11.78		2,945,313	(320,313)		\$ 3,270,340.05	\$ 2,946,792.33	
13	19.03		7,612,500	(287,500)		\$ 7,917,124.00	\$ 7,620,180.87	
14	8.83		1,765,625	(359,375)		\$ 2,134,812.50	\$ 1,766,099.81	
15	58.66		6,452,188	886,875		\$ 5,573,673.40	\$ 6,442,945.82	
16	17.56		6,146,875	853,125		\$ 5,304,250.00	\$ 6,144,045.09	
17	84.44		6,332,813	496,875		\$ 5,841,050.00	\$ 6,333,055.12	
18			<u>58,118,438</u>	<u>2,319,875</u>		<u>\$55,877,288.75</u>	<u>\$58,115,376.44</u>	
19								
20								
21							\$ 2,238,088	
22	(28,506)							
23	98.75%		1.25%				\$ (81,787.31)	
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— = Redacted by the Permanent  
Subcommittee on Investigations

QUELLOS FINANCIAL ADVISORS, LLC  
667 Madison Avenue  
25<sup>th</sup> Floor  
New York, New York 10021

January 16, 2001

[REDACTED]  
[REDACTED]  
Trustees, u/t/a dated 4/9/97, 10/8/98, and 4/6/00 (the "Trusts")

c/o [REDACTED]  
[REDACTED] Road  
[REDACTED] New York

Re: Acquisition (the "Acquisition") of Platinum Trading  
Partners, LLC (the "Company") and the related Loan  
Transaction (the "Financing") with HSBC Bank USA (the "Bank")

Gentlemen:

We refer to our letter to you of November 29, 2000 regarding the referenced transaction that closed on November 30, 2000.

This letter confirms our agreement to accept \$1,240,000 as the total amount of compensation to be paid by you and the Company to the undersigned for our services as introducing party and financial advisor to each of you in connection with the Acquisition, the Financing and related transactions (the "Platinum Transactions"). We have previously received a deposit of \$3,240,000 on account of such compensation and are returning to you by wire transfer to the Company's account at Goldman Sachs (for which you have furnished wire transfer instructions) the amount of \$2,000,000, which represents the difference between the \$3,240,000 deposit and the amount of Quellos' compensation to which we have agreed.

— = Redacted by the Permanent  
Subcommittee on Investigations

Our November 29, 2000 letter remains in effect, however, we understand that the transfers of funds to consummate the Platinum Transactions were indefeasibly received by their intended recipients and that you have received the contemplated opinion of your Special Tax Counsel. Please confirm that our understanding is correct.

Very truly yours,

QUELLOS FINANCIAL ADVISORS, LLC

By: \_\_\_\_\_

Authorized Signer

122841

Confirmed:

Mr. \_\_\_\_\_

Mr. \_\_\_\_\_

Trustees, w/t/a dated 4/9/97, 10/8/98, and 4/6/00 (the "Trusts")

By: \_\_\_\_\_

Authorized Signer

**D**

**Cobalt Trading Partners LLC**  
**Daily Report as of 12/26/2001 - Final**

11/7/01  
12/7/01

**Final Consolidated Profitability<sup>1</sup>**

Initial Equity Portfolio Value	\$ (19,944,096)
Final Equity Portfolio Value	\$ 6,462,270
Final Gain/Loss on Equity Portfolio	
Initial Collateral Cost	(2,445,539)
Final Collateral Value	(2,739,270)
Gain/Loss on Collateral	(283,731)
Total Investment Gain/Loss	1,222,111
Securitizing Fee <sup>2</sup>	(1,200,000)
Final Total Net Gain/Loss	\$ 22,111
Final Total Net Gain/Loss as a Percentage of Cost <sup>3</sup>	0.1%
Implied Annual Return	4.0%

<sup>1</sup> Included in the aggregate purchase price paid for Cobalt Trading Partners LLC.  
<sup>2</sup> Costs include initial equity portfolio value, initial collateral cost and structuring fees.  
<sup>3</sup> Based on indicative unitized pricing provided by ISBC Bank USA.  
<sup>4</sup> Includes commission of \$1.00.

**Equity Portfolio Composition**

Company Name	Shares	Current Price	Current Value	Unrealized Gain/Loss	% of Portfolio
Alcatel	185,200	\$ 19.11	\$ 3,539,332	\$ 44,433	6.3%
Alcatel USA, Inc.	250,000	\$ 26.31	\$ 6,577,500	\$ 29,431	10.0%
Chen Systems, Inc.	200,000	\$ 35.99	\$ 7,198,000	\$ 71,358	10.7%
Dell Computer Corporation	132,000	\$ 71.50	\$ 9,438,000	\$ 73,772	14.1%
EBAY Inc.	173,100	\$ 25.63	\$ 4,436,967	\$ 18,977	6.7%
First Data Corporation	272,200	\$ 12.59	\$ 3,418,258	\$ 11,641	5.3%
Insomniac Corporation	193,000	\$ 11.51	\$ 2,220,450	\$ 41,116	3.3%
Qwest Communications International Inc.	100,000	\$ 28.13	\$ 2,813,000	\$ 40,116	4.3%
QUALCOMM Incorporated	217,000	\$ 28.13	\$ 6,104,110	\$ 40,116	9.4%
VeriFone Inc.	100,000	\$ 44.63	\$ 4,463,000	\$ 44,630	6.6%
<b>Total</b>			<b>\$ 59,544,096</b>	<b>\$ 6,462,270</b>	<b>10.7%</b>

Equity Portfolio Gain (Loss) Since Inception: 10.7%

Portfolio	Initial	Final	Gain/Loss	% of Portfolio
Alcatel	185,200	185,200	0.00%	0.00%
Alcatel USA, Inc.	250,000	250,000	0.00%	0.00%
Chen Systems, Inc.	200,000	200,000	0.00%	0.00%
Dell Computer Corporation	132,000	132,000	0.00%	0.00%
EBAY Inc.	173,100	173,100	0.00%	0.00%
First Data Corporation	272,200	272,200	0.00%	0.00%
Insomniac Corporation	193,000	193,000	0.00%	0.00%
Qwest Communications International Inc.	100,000	100,000	0.00%	0.00%
QUALCOMM Incorporated	217,000	217,000	0.00%	0.00%
VeriFone Inc.	100,000	100,000	0.00%	0.00%

Portfolio	Initial	Final	Gain/Loss	% of Portfolio
Alcatel	185,200	185,200	0.00%	0.00%
Alcatel USA, Inc.	250,000	250,000	0.00%	0.00%
Chen Systems, Inc.	200,000	200,000	0.00%	0.00%
Dell Computer Corporation	132,000	132,000	0.00%	0.00%
EBAY Inc.	173,100	173,100	0.00%	0.00%
First Data Corporation	272,200	272,200	0.00%	0.00%
Insomniac Corporation	193,000	193,000	0.00%	0.00%
Qwest Communications International Inc.	100,000	100,000	0.00%	0.00%
QUALCOMM Incorporated	217,000	217,000	0.00%	0.00%
VeriFone Inc.	100,000	100,000	0.00%	0.00%

Confidential

Qualitas Custom Strategies, LLC



— = Redacted by the Permanent  
Subcommittee on Investigations

**Marvin Schein/Cobalt Trading Partners LLC**  
*Cash Flow Analysis as of 12/13/01*

**Checking Account Reconciliation**

— wire to HSBC

Transfer to Barnville  
Transfer to Cobalt for Collar Purchase  
Transfer to Quellos  
Transfer to Euram  
Credit from Cobalt  
Credit from Euram  
Credit from Barnville  
Interest Earned at HSBC

Debits	Credits	Account Balance
	64,300,000	\$ 64,300,000
60,001,295		4,298,705
2,442,282		1,856,423
1,200,128		656,295
606,074		50,221
	1,743	51,964
	427	52,391
	42,258	94,650
	16	\$ 94,665

**Cobalt Checking Account Reconciliation**

— transfer to Cobalt for Collar Purchase  
HSBC Interest Payment  
Transfer to Custody for Collar Purchase  
Transfer to —  
HSBC Monthly Analysis Charge  
Transfer from HSBC Holding Account  
Wire transfer to Cobalt Goldman Sachs Account

Debits	Credits	Account Balance
	2,442,282	\$ 2,442,282
	119	\$ 2,442,401
2,440,539		1,862
1,743		119
20		99
	18,336	18,435
18,435		\$ -

**Cobalt Custody Account Reconciliation**

Initial Custody Balance via Barnville  
Transfer from Cobalt Checking to Custody for Collar Purchase  
Equity Portfolio Cost  
Collar Cost  
Equity Portfolio Sale Proceeds (net of commission)  
Collar Unwind Proceeds  
Wire transfer to Cobalt Goldman Sachs Account

Debits	Credits	Account Balance
	\$ 59,964,098	\$ 59,964,098
	2,440,539	62,404,637
59,964,098		2,440,539
2,440,539		-
	66,432,240	66,432,240
2,795,270		63,636,970
63,636,970		\$ -

Total Cash Available to — Cobalt as of 12/13/01

\$ 63,750,070

Initial Cash Investment

\$ 64,300,000

Net Cost of Transaction

\$ (549,930)

Confidential

Quellos Custom Strategies, LLC

3

**A**

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Quadra Custom Strategies, L.L.C.

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Subcommittee on Investigations

INVOICE

June 21, 2000

Torens Limited  
19 Mount Havelock  
Douglas, Isle of Man

Billing for services provided as they pertain to hedging and other related  
investment strategies for Torens Limited.

\$600,000

Please remit via Fedwire to:

Bank of America  
ABA #: 125 000 024  
Account Name: Quadra Custom Strategies  
Account #: [REDACTED]  
Amount: \$600,000

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INVOICE

— = Redacted by the Permanent  
Subcommittee on Investigations

June 19, 2000

Barnville Limited  
19 Mount Havelock  
Isle of Man

Billing for initial analysis and corporate derivative structuring related  
to the investment activity in Torens Limited.

\$1,200,000

Please remit funds via Fedwire to:

Bank of America  
ABA # 125 000 024  
Quadra Capital Markets  
ACC # [REDACTED]

— = Redacted by the Permanent  
Subcommittee on Investigations

# **Torens Limited**

## **Summary as of May 19, 2000 (Execution prices at close-out)**

Company	Ticker	Shares	Price	Basis Amount
Qualcom	QCOM	150,000	179.31	26,896,500
Verisign	VRSN	125,000	246.06	30,757,813
CMGI	CMGI	150,000	163.22	24,483,000
Internet Capital Group	ICGE	200,000	200.00	40,000,000
Broadvision	BVSN	200,000	77.69	15,537,500
Real Networks	RNWK	200,000	73.00	14,600,000
Ariba Inc.	ARBA	150,000	136.13	20,418,750
Yahoo!	YHOO	150,000	237.50	35,625,000
Citrix Systems Inc.	CTXS	200,000	103.06	20,612,500
Amazon.com	AMZN	150,000	89.37	13,405,500
				<u>242,336,563</u>

### Estimated Consolidated P & L

Stock sale proceeds	104,868,603
Trade value	#####
Gain/(loss) on stock	(15,654,910)
Proceeds from sale of put	
Cost of long put	22,296,049
Gain/(loss) on put	(17,765,335)
	4,530,714
Cost of covering call	(4,723,441)
Proceeds from short call	14,945,059
Gain/(loss) on call	<u>10,221,618</u>

Total trading gain/(loss)	(902,578)
Prepaid Interest	(3,899,701)
Investment advisory fee	(600,000)
Net gain/(loss)	<u>(5,402,279)</u>
Net loss as % of initial loss	4.43%

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Call Spread P&L Analysis				
05/18/2000				
Call	Strike	# Contracts	FMV	FMV Amount
Call	100	1,205,235	6.5059	7,841,139
	108	(1,205,235)	3.9191	(4,723,441)
				3,117,698
	Hedge cost			(5,519,977)
	Gain (Loss) on Spread			(2,402,279)
	SPV Premium (EurAm)			(1,200,000)
	OTC Put Spread			(1,200,000)
	Q Advisory Fee			(600,000)
				<u>(5,402,279)</u>

Initial Gain (Loss)	Purchase Price	Purchase Amount	Execution Level
(10,809,000)	107.25	16,087,500	90.74
(13,486,175)	138.17	17,271,638	125.40
(14,156,370)	68.84	10,326,630	54.47
(31,719,040)	41.40	8,280,960	30.06
(6,840,480)	43.49	8,697,020	43.18
(5,413,980)	45.93	9,186,020	35.10
(9,192,180)	74.84	11,226,570	59.82
(16,108,890)	130.11	19,516,110	126.25
(8,849,400)	58.82	11,763,100	49.07
(5,237,535)	54.45	8,167,965	53.46
<u>(121,813,050)</u>		<u>120,523,513</u>	

Outside Basis

## Additions:

Purchase price  
 Prepaid fees (excludes ppd interest)  
 Contribution for collar purchase  
 Basis in El Paso stock  
 Total basis additions

MZ

119,320,683  
 1,188,000  
 2,792,073  
 ?  
123,300,756 -

## Reductions:

Distribution for Barnville repayment  
 Misc. distribution  
 Total basis reductions

#####  
 ?  
#####



Net basis in SPV

3,771,262

Notes:

1. Interest portion of prepaid interest and fees is not included in outside basis.
2. Interest paid on deferred purchase price is not included in outside basis.
3. Any structuring fees can be included in outside basis.

Total	
Proceeds	Gain (Loss)
13,610,295	(2,477,205)
15,674,963	(1,596,675)
8,170,080	(2,156,550)
6,012,500	(2,268,460)
8,636,560	(60,460)
7,020,540	(2,165,480)
8,972,760	(2,253,810)
18,937,500	(578,610)
9,813,760	(1,949,340)
8,019,645	(148,320)
<u>104,868,603</u>	<u>(15,654,910)</u>

Purchase date 04/28/2000  
Payment date 05/19/2000

Digital	Total
1,202,830	120,523,513
12,000	1,200,000
28,203	2,820,276
?	?
<u>1,243,033</u>	<u>124,543,789</u>
(1,204,935)	#####
?	?
<u>(1,204,935)</u>	<u>#####</u>

1365

FEDERAL AND NY STATE TAX  
ID NUMBER D-5018408

IF REMITTANCE IS BY WIRE TRANSFER, PLEASE DIRECT TO:  
THE CHASE MANHATTAN BANK, ABA 0021000021  
4 NEW YORK PLAZA, NEW YORK, NY 10004  
CRAVATH, SWAINE & MOORE A/C #001-020058

WHEN REMITTING, PLEASE REFERENCE:

The Quadra Group  
601 Union Street, 56th Floor  
Seattle, WA 98101

BILL NO.112421a

Attention of Chuck Wilk

November 3, 2000

CRAVATH, SWAINE & MOORE

WORLDWIDE PLAZA  
825 EIGHTH AVENUE  
NEW YORK, NY 10019-7475  
212-474-1000

For tax opinions re: purchase  
of an equity interest in an investment  
partnership

\$25,000.00

Other Charges

Expenses incident to overtime	8.96
Duplicating	13.10
Long Distance Telephone	5.21
Outgoing Fax	157.00
Lexis	98.72
Other Database Research	14.00
Messenger-Firm	4.67

Total Other Charges

301.66

Disbursements

Ground Transportation	\$ 14.67
Courier/Mail Services	8.58

Total Disbursements

Total

23.25  
\$25,324.91

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ST. LOUIS, MISSOURI  
WASHINGTON, D.C.  
KANSAS CITY, MISSOURI  
OVERLAND PARK, KANSAS  
PHOENIX, ARIZONA  
SANTA MONICA, CALIFORNIA  
IRVINE, CALIFORNIA

**BRYAN CAVE LLP**  
245 PARK AVENUE  
NEW YORK, NEW YORK 10167  
EMPLOYER IDENTIFICATION NUMBER: 43-0602162

LONDON, ENGLAND  
RIYADH, SAUDI ARABIA  
KUWAIT CITY, KUWAIT  
ABU DHABI, UNITED ARAB EMIRATES  
DUBAI, UNITED ARAB EMIRATES  
HONG KONG  
ASSOCIATED OFFICE IN SHANGHAI

June 22, 2001

Mr. Andrew Robbins  
Quellos Group, LLC  
667 Madison Avenue  
25th Floor  
New York, New York 10021

OFN: C40921/117750/120071/121185/121186

TO PROFESSIONAL SERVICES AND ADVICE  
rendered through in connection with the Burgundy,  
Titanium, Platinum and Torens matters including matters in  
connection with the liquidation of the Isle of Man entity, the  
completion of transfer documents for Burgundy Limited,  
the preparation of an Assignment and Consent for Burgundy  
I, LLC, a review of the Operating Agreement regarding the  
same and the finalization of Consents and Assignments for  
Burgundy; revisions to liquidation documentation,  
numerous telephone conversations with representatives of  
Quellos in connection with the foregoing and other  
miscellaneous services and advice in connection with the  
foregoing ..... \$3,640.00

TO DISBURSEMENTS incurred and  
recorded to date in connection with the foregoing:

Long Distance Telephone Charges	\$ 3.00	
Copying Expenses	25.20	
National Corporate Research		
Formation Filings	738.00	
Delivery and Messenger Charges	7.00	
Facsimile Charges	9.00	
Postage	.99	\$783.19

**TOTAL DUE** **\$4,423.19**

INVOICE DUE UPON RECEIPT

PLEASE RETURN REMITTANCE ADVICE WITH PAYMENT IN THE ENCLOSED ENVELOPE AND MAIL TO  
BRYAN CAVE LLP, 245 PARK AVENUE, NEW YORK, NY 10167  
OR WIRE TRANSFER FUNDS TO THE BANK OF NEW YORK, ROUTING #021000016, ACCOUNT #6302197634  
PLEASE INCLUDE REFERENCE TO INVOICE NUMBER. THANK YOU.

278899.01

1367

**BRYAN CAVE LLP**

ST. LOUIS, MISSOURI  
WASHINGTON, D.C.  
NEW YORK, NEW YORK  
KANSAS CITY, MISSOURI  
OVERLAND PARK, KANSAS  
PHOENIX, ARIZONA  
SANTA MONICA, CALIFORNIA  
IRVINE, CALIFORNIA

EMPLOYER IDENTIFICATION NUMBER: 43-0602162

RIYADH, SAUDI ARABIA  
KUWAIT CITY, KUWAIT  
ABU DHABI, UNITED ARAB EMIRATES  
DUBAI, UNITED ARAB EMIRATES  
HONG KONG  
SHANGHAI, PEOPLE'S REPUBLIC OF CHINA  
IN ASSOCIATION WITH BRYAN CAVE,  
A MULTINATIONAL PARTNERSHIP,  
LONDON, ENGLAND

Quellos Group, LLC  
667 Madison Avenue  
New York, New York 10021

January 9, 2001  
Invoice # 682027  
Client # C40921

Payment is due upon  
Receipt

STATEMENT OF ACCOUNT

— = Redacted by the Permanent  
Subcommittee on Investigations

BALANCE FORWARD:

Balance per Statement Dated August 28, 2000	\$	334.91
Payments and Other Credits	(	334.91)
<b>BALANCE FORWARD</b>	<b>\$</b>	<b>0.00</b>

CURRENT CHARGES FOR MATTER:

File #117750  
Tax Advice

Fees for Legal Services	\$	3,936.25
Expenses and Other Charges		219.44
<b>TOTAL CHARGES THIS INVOICE</b>	<b>\$</b>	<b>4,155.69</b>

<b>STATEMENT TOTAL</b>	<b>\$</b>	<b>4,155.69</b>
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**POSTED**

INVOICE DUE UPON RECEIPT

PLEASE RETURN REMITTANCE ADVICE WITH PAYMENT IN THE ENCLOSED ENVELOPE AND MAIL TO  
BRYAN CAVE LLP, P.O. BOX 800089, ST. LOUIS, MO 63180-3089  
OR WIRE TRANSFER FUNDS TO NATIONSBANK, N.A., ROUTING 0081000002, ACCOUNT #100101007976  
PLEASE INCLUDE REFERENCE TO INVOICE NUMBER. THANK YOU.

## BRYAN CAVE LLP

Quellos Group, LLC

January 9, 2001  
 Invoice # 682027  
 Client # C40921  
 Page 2

For Legal Services Rendered Through December 31, 2000

File #117750  
 Tax Advice

07/05/00 N. P. Meisels	Office conference with E. Smith; e-mail C. Cain regarding liquidation of Torens. .30 hrs.	105.00
07/10/00 N. P. Meisels	Email C. Cain re Torens. .25 hrs.	87.50
08/01/00 J. Y. Sung	Advise on LLC issues re Torens. .50 hrs.	77.50
08/07/00 E. A. Smith	Follow up with C. Wilk on status of LLC Torens agreement. .25 hrs.	106.25
08/07/00 N. P. Meisels	Telephone call to L. Phillips. .25 hrs.	87.50
08/22/00 E. A. Smith	E-mails with A. Robbins on changing from Torens LLC to LLP; review same with Valerie Schram. .50 hrs.	212.50
08/22/00 N. P. Meisels	Office conference with E. Smith regarding Torens LLP agreement. .25 hrs.	87.50
08/23/00 N. P. Meisels	Office conference with V. Schram and J. Sung regarding Torens LLP agreement. .30 hrs.	105.00
08/23/00 V. J. Schram	Conference with N. P. Meisels and J. Sung regarding new limited liability limited partnership operating agreement for Torens to be drafted. .25 hrs.	37.50
08/23/00 J. Y. Sung	Telephone call(s) with V. Schram. Meeting with N. Meisels and V. Schram. Research LP law and Torens LP operating agreements. 1.25 hrs.	193.75

**BRYAN CAVE LLP**

Quellos Group, LLC

January 9, 2001  
 Invoice # 682027  
 Client # C40921  
 Page 3

09/11/00 E. A. Smith	Meet with J. Sung and review Torens LLP agreements to finalize same.	1.00 hrs.	425.00
09/11/00 J. Y. Sung	Review and revise Torens LLP agreements. Meeting w/ E. Smith.	1.50 hrs.	232.50
09/12/00 C. M. Lois	Reviewed and revised Torens Certificate of Limited Partnership and Operating Agreement; conferred with J. Sung;	3.25 hrs.	503.75
09/12/00 E. A. Smith	Finalize Torens LLP agreements.	.50 hrs.	212.50
09/12/00 J. Y. Sung	Meeting w/ E. Smith. Review and revise Torens LP formation and operating agreement.	3.00 hrs.	465.00
09/19/00 J. Y. Sung	Memo to L. Phillips re Torens.	.25 hrs.	38.75
09/27/00 N. P. Meisels	Office conference with L. Philips.	.25 hrs.	87.50
10/03/00 E. A. Smith	Follow up with A. Robbins on Torens liquidation.	.50 hrs.	212.50
10/04/00 E. A. Smith	Follow up with Torens LP on liquidation efforts; telephone conference with A. Robbins on same.	.25 hrs.	106.25
11/28/00 L. M. Phillips	Amend Torens LP operating agreement to include contribution amounts in schedule A; email final operating agreement to Andy Robbins for execution.	.50 hrs.	85.00
12/04/00 L. M. Phillips	Call with Brian Hanson regarding Torens Limited distribution and liquidation; fax signed operating agreement for Torens LP to Leveda at Goldman Sachs; email Paul Moore to begin distribution and liquidation; compile list for file regarding all items performed for Quellos.	2.00 hrs.	340.00

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**BRYAN CAVE LLP**

Quellos Group, LLC

January 9, 2001  
Invoice # 682027  
Client # C40921  
Page 4

12/05/00 L. M. Phillips	Email to Paul Moore regarding Toren's distribution and liquidation; call with Brian Hanson regarding Toren's distribution/liquidation and email.
	.50 hrs. 85.00
12/11/00 L. M. Phillips	Revise Toren's LP operating agreement and email to Brian Hanson.
	.25 hrs. 42.50

Total Hours 17.85

Total Fees for Legal Services \$ 3,936.25

EXPENSES AND OTHER CHARGES

Business conference expenses	68.29
Computerized support services	18.00
Copying expenses	58.60
Telecopier/fax charges	42.00
Postage	.88
Delivery & messenger service	21.44
Long distance telephone charges	10.23

Total Expenses and Other Charges \$ 219.44

TOTAL CHARGES FOR THIS MATTER \$ 4,155.69



1371

**BRYAN CAVE LLP**

Quellos Group, LLC  
667 Madison Avenue  
New York, New York 10021

January 9, 2001  
Invoice # 682027  
Client # C40921  
File # 117750

REMITTANCE ADVICE

CURRENT CHARGES

Fees for Legal Services	\$	3,936.25
Expenses and Other Charges		219.44
TOTAL CHARGES THIS INVOICE	\$	4,155.69

**B**

**[REDACTED] - Burgundy Limited**

[REDACTED] = Redacted by the Permanent Subcommittee on Investigations

Notional amount 180,000,000

Investment Activity Schedule						Basket Call
Date	Expir.	# Days	Description	USD Strike	Premium	Description
5/10/00	8/21/00	103	Sell OTC Call	111%	132,073,676	16,241,493
5/10/00	8/21/00		Buy OTC Put	100%	118,985,294	(19,811,051)
			Net Premium			(3,569,559)
5/10/00	8/21/00	103	Call Spread Premium		(7,000,000)	
			Purchase Premium (EURAM)		(1,800,000)	
			Prepaid Interest & Structuring Costs		(5,230,441)	
			Investment Advisory Fee		(3,600,000)	
			Total Cash Required Upfront		(12,400,000)	Total Amou Initial Loss

Date	Maturity	Party	Description	Shares	Strike	Amount	Notes
5/10/00	8/24/00	SH LLC	Purchase Agrmt	1000		118,985,294	
5/10/00		SH Inc.	Purchase Agrmt				
5/10/00		Burgundy	Contribution Agrmt	1000			
5/10/00		Burgundy	Promissory Note			300,584,525	s/b FMV or
5/10/00	5/10/05	Burgundy	Global Call Warrant	1000	150%	178,478	
5/10/00		Burgundy	Subscription	1000	48.63%	57,863	

1374

ST. LOUIS, MISSOURI  
WASHINGTON, D.C.  
KANSAS CITY, MISSOURI  
OVERLAND PARK, KANSAS  
PHOENIX, ARIZONA  
SANTA MONICA, CALIFORNIA  
IRVINE, CALIFORNIA

**BRYAN CAVE LLP**  
245 PARK AVENUE  
NEW YORK, NEW YORK 10167  
EMPLOYER IDENTIFICATION NUMBER: 43-0902162

LONDON, ENGLAND  
RIYADH, SAUDI ARABIA  
KUWAIT CITY, KUWAIT  
ABU DHABI, UNITED ARAB EMIRATES  
DUBAI, UNITED ARAB EMIRATES  
HONG KONG  
ASSOCIATED OFFICE IN SHANGHAI

June 22, 2001

Mr. Andrew Robbins  
Quellos Group, LLC  
667 Madison Avenue  
25th Floor  
New York, New York 10021

OFN: C40921/117750/120071/121185/121186

TO PROFESSIONAL SERVICES AND ADVICE  
rendered through in connection with the Burgundy,  
Titanium, Platinum and Toren matters including matters in  
connection with the liquidation of the Isle of Man entity, the  
completion of transfer documents for Burgundy Limited,  
the preparation of an Assignment and Consent for Burgundy  
I, LLC, a review of the Operating Agreement regarding the  
same and the finalization of Consents and Assignments for  
Burgundy; revisions to liquidation documentation,  
numerous telephone conversations with representatives of  
Quellos in connection with the foregoing and other  
miscellaneous services and advice in connection with the  
foregoing ..... \$3,640.00

TO DISBURSEMENTS incurred and  
recorded to date in connection with the foregoing:

Long Distance Telephone Charges	\$ 3.00
Copying Expenses	25.20
National Corporate Research	
Formation Filings	738.00
Delivery and Messenger Charges	7.00
Facsimile Charges	9.00
Postage	.99
	<u>\$783.19</u>
<b>TOTAL DUE</b>	<b><u>\$4,423.19</u></b>

INVOICE DUE UPON RECEIPT

PLEASE RETURN REMITTANCE ADVICE WITH PAYMENT IN THE ENCLOSED ENVELOPE AND MAIL TO  
BRYAN CAVE LLP, 245 PARK AVENUE, NEW YORK, NY 10167  
OR WIRE TRANSFER FUNDS TO THE BANK OF NEW YORK, ROUTING #021000018, ACCOUNT #6302197634  
PLEASE INCLUDE REFERENCE TO INVOICE NUMBER. THANK YOU.

278899.01

1375

**BRYAN CAVE LLP**

ST. LOUIS, MISSOURI  
WASHINGTON, D.C.  
NEW YORK, NEW YORK  
KANSAS CITY, MISSOURI  
OVERLAND PARK, KANSAS  
PHOENIX, ARIZONA  
SANTA MONICA, CALIFORNIA  
IRVINE, CALIFORNIA

EMPLOYER IDENTIFICATION NUMBER: 43-0602152

RIYADH, SAUDI ARABIA  
KUWAIT CITY, KUWAIT  
ABU DHABI, UNITED ARAB EMIRATES  
DUBAI, UNITED ARAB EMIRATES  
HONG KONG  
SHANGHAI, PEOPLE'S REPUBLIC OF CHINA  
IN ASSOCIATION WITH BRYAN CAVE,  
A MULTINATIONAL PARTNERSHIP.  
LONDON, ENGLAND

Quellos Group, LLC  
667 Madison Avenue  
New York, New York 10021

January 9, 2001  
Invoice # 682028  
Client # C40921

Payment is due upon  
Receipt

STATEMENT OF ACCOUNT

BALANCE FORWARD:

BALANCE FORWARD \$ 0.00

CURRENT CHARGES FOR MATTER:

File #120071

Burgundy Transaction *Johnson*

**POSTED**

Fees for Legal Services \$ 4,125.20  
Expenses and Other Charges 10.33

TOTAL CHARGES THIS INVOICE \$ 4,135.53

STATEMENT TOTAL \$ 4,135.53

**INVOICE DUE UPON RECEIPT**

PLEASE RETURN REMITTANCE ADVICE WITH PAYMENT IN THE ENCLOSED ENVELOPE AND MAIL TO  
BRYAN CAVE LLP, P.O. BOX 503089, ST. LOUIS, MO 63150-3089  
OR WIRE TRANSFER FUNDS TO NATIONSBANK, N.A., ROUTING #081000032, ACCOUNT #100101007876  
PLEASE INCLUDE REFERENCE TO INVOICE NUMBER. THANK YOU.

## BRYAN CAVE LLP

Quellos Group, LLC

January 9, 2001  
 Invoice # 682028  
 Client # C40921  
 Page 2

For Legal Services Rendered Through December 31, 2000

File #120071  
 Burgundy Transaction

09/22/00 L. M. Phillips	Contact Quadra regarding Burgundy LLC formation. .15 hrs.	25.50
09/25/00 L. M. Phillips	Draft LLC certificate and operating agreement for Burgundy Limited. 1.00 hrs.	170.00
09/26/00 L. M. Phillips	Conference with E.A. Smith regarding LLC formation and operating agreement; send Andrew Robbins drafts for review and approval. .25 hrs.	42.50
10/03/00 E. A. Smith	Follow up on formation of Delaware LLCs and liquidation of former SPVs. .25 hrs.	106.25
10/10/00 N. P. Meisels	Office conference with Betsy Smith and Lana Phillips re transfer of assets; office conference with Lana regarding same; conference with E. Smith regarding opinion. .50 hrs.	175.00
10/10/00 E. A. Smith	Work on domestication and conference with A. Robbins on same. .75 hrs.	318.75
10/10/00 E. A. Smith	Work on liquidation and move to Delaware issues. .25 hrs.	106.25
10/11/00 L. M. Phillips	.50 hrs.	85.00
10/18/00 E. A. Smith	Continued work on issues for domestication. .25 hrs.	106.25
10/20/00 J. Y. Sung	Discussion w/ L. Phillips re LLC Operating Agreement. .12 hrs.	18.60

## BRYAN CAVE LLP

Quellos Group, LLC

January 9, 2001  
 Invoice # 682028  
 Client # C40921  
 Page 3

10/20/00 E. A. Smith	Telephone conference with B. Hanson and follow-up with relocation to Delaware. .25 hrs.	106.25
10/24/00 E. A. Smith	Telephone conference with B. Hanson on LLC and notes. 1.00 hrs.	425.00
10/27/00 L. M. Phillips	Conference call with Andy Robbins and Brian Hanson regarding Burgundy liquidation and domestic formation; meeting with E.A. Smith regarding plan. 1.25 hrs.	212.50
10/27/00 E. A. Smith	Conversation with B. Hanson on operating agreements and contributions. .75 hrs.	318.75
10/31/00 W. A. Leet	Drafting demand note. .80 hrs.	360.00
11/06/00 L. M. Phillips	Create Burgundy I LLC; call service company regarding acceptable name for Burgundy I; revise Burgundy I operating agreement to reflect new name. .75 hrs.	127.50
11/06/00 J. Y. Sung	Correspondence w/ L. Phillips re operating agreements. .12 hrs.	18.60
11/07/00 E. A. Smith	Telephone conference with Lana Phillips various operating agreement issues and notes issue. .75 hrs.	318.75
11/07/00 L. M. Phillips	Order corporate book for entity; call with Brian Hanson regarding tax i.d. number and getting new numbers for operating agreement; compile documents and files for entity. 1.00 hrs.	170.00
11/08/00 E. A. Smith	Follow up on dissolution and liquidation. .25 hrs.	106.25

## BRYAN CAVE LLP

Quellos Group, LLC

January 9, 2001  
 Invoice # 682028  
 Client # C40921  
 Page 4

11/09/00 E. A. Smith	Telephone conference with B. Hanson o notes and formation of new LLCs in Delaware. .25 hrs.	106.25
11/10/00 L. M. Phillips	Call Michelle Cotignola, secretary for Andy Robbins, to verify operating agreement information and discuss execution of orginals; call and email Brian Hanson regarding operating agreement and Torens issues; prepare original operating agreement for execution and Fedex. 1.00 hrs.	170.00
11/21/00 L. M. Phillips	Email W.A. Leet regarding edits to Burgundy note; email revised note to Andy Robbins at Quellos. .25 hrs.	42.50
11/28/00 L. M. Phillips	Calls with Brian Hanson regarding distribution and liquidation of Burgundy Limited; email to Paul Moore instructing him to begin distribution and liquidation; email final copies of Burgundy & Reka operating agreements to Brian Hanson. 1.50 hrs.	255.00
11/28/00 E. A. Smith	Conference regarding dissolution and LLC formation, notes, and operating agreements. .25 hrs.	106.25
11/29/00 L. M. Phillips	Call to Paul Moore regarding Burgundy Limited distribution and liquidation; call to Brian Hanson regarding distribution and liquidation. .25 hrs.	42.50
12/07/00 L. M. Phillips	Call with Brian Hanson regarding revising Schedule A in operating agreements. .25 hrs.	42.50
12/11/00 L. M. Phillips	Revise Burgundy I LLC operating agreement and email to Brian Hanson. .25 hrs.	42.50
Total Hours	14.94	
Total Fees for Legal Services		\$ 4,125.20



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**BRYAN CAVE LLP**

Quellos Group, LLC

January 9, 2001  
Invoice # 682028  
Client # C40921  
Page 5

EXPENSES AND OTHER CHARGES

Copying expenses		.60
Telecopier/fax charges		8.00
Long distance telephone charges		1.73
Total Expenses and Other Charges	\$	10.33
 TOTAL CHARGES FOR THIS MATTER	 \$	 4,135.53

1380

**BRYAN CAVE LLP**

Quellos Group, LLC  
667 Madison Avenue  
New York, New York 10021

January 9, 2001  
Invoice # 682028  
Client # C40921  
File # 120071

REMITTANCE ADVICE

CURRENT CHARGES

Fees for Legal Services	\$	4,125.20
Expenses and Other Charges		10.33
TOTAL CHARGES THIS INVOICE	\$	4,135.53

C

— = Redacted by the Permanent  
Subcommittee on Investigations

QUELLOS FINANCIAL ADVISORS, LLC  
667 Madison Avenue  
25<sup>th</sup> Floor  
New York, New York 10021

January 16, 2001

Mr. [REDACTED]  
Mr. [REDACTED]  
Trustees, u/a dated 4/9/97, 10/8/98, and 4/6/00 (the "Trusts")  
c/o [REDACTED]  
[REDACTED], New York [REDACTED]

Re: Acquisition (the "Acquisition") of Platinum Trading  
Partners, LLC (the "Company") and the related Loan  
Transaction (the "Financing") with HSBC Bank USA (the "Bank")

Gentlemen:

We refer to our letter to you of November 29, 2000 regarding the referenced transaction that closed on November 30, 2000.

This letter confirms our agreement to accept \$1,240,000 as the total amount of compensation to be paid by you and the Company to the undersigned for our services as introducing party and financial advisor to each of you in connection with the Acquisition, the Financing and related transactions (the "Platinum Transactions"). We have previously received a deposit of \$3,240,000 on account of such compensation and are returning to you by wire transfer to the Company's account at Goldman Sachs (for which you have furnished wire transfer instructions) the amount of \$2,000,000, which represents the difference between the \$3,240,000 deposit and the amount of Quellos' compensation to which we have agreed.

— = Redacted by the Permanent  
Subcommittee on Investigations

Our November 29, 2000 letter remains in effect, however, we understand that the transfers of funds to consummate the Platinum Transactions were indefeasibly received by their intended recipients and that you have received the contemplated opinion of your Special Tax Counsel. Please confirm that our understanding is correct.

Very truly yours,

QUELLOS FINANCIAL ADVISORS, LLC

By: 

Authorized Signer

122841

Confirmed:

Mr. 

Mr. 

Trustees, u/t/a dated 4/9/97, 10/8/98, and 4/6/00 (the "Trusts")

By: 

Authorized Signer

1384

Quellos Custom Strategies, L.L.C.

— = Redacted by the Permanent  
Subcommittee on Investigations

INVOICE

November 30, 2000

Platinum Trading Partners, LLC

C/O

Attn:

Billing for services provided as they pertain to acting as an introducing party and financial advisor to Platinum Trading Partners, LLC. \$3,240,000

Please remit via Fedwire to:

Bank of America

ABA #: 125 000 024

Account Name: Quellos Custom Strategies

Account #:

Amount: \$3,240,000

1385

Platinum

	A
1	<b>Platinum Trading Partners, LLC</b>
2	<b>Summary as of</b>
4	
5	
6	Company
7	America Online
8	Clear Channel Communications
9	Conexant
10	3 Com Corporation
11	DoubleClick
12	Dell Computer Corp.
13	Infospace
14	JDS Uniphase
15	Lucent
16	QUALCOMM
17	
18	
19	
20	
21	
22	
23	<b><u>Estimated Consolidated P&amp;L</u></b>
24	Stock sale proceeds
25	Trade value
26	Gain/(loss) on stock
27	
28	Proceeds from sale of put
29	Cost of long put
30	Gain/(loss) on put
31	
32	Cost of covering call
33	Proceeds from short call
34	Gain/(loss) on call
35	
36	Total trading gain/(loss)
37	Structuring fees
38	HSBC commissions/execution slippage
39	Investor Financing
40	Quellos fees
41	Net gain/(loss)
42	
43	Net loss as % of initial loss
44	
45	<i>Actual Investment Return Analysis</i>

1386

Platinum

	B	C	D	F	G	H
1						
2	12/18/2000 (Termination Date)					
4						
5			Basis	Basis	Initial	
6	Ticker	Shares	Price	Amount	Gain (Loss)	
7	AOL	200,000	82.75	16,550,000	(8,648,000)	
8	CCU	150,000	87.75	13,162,500	(5,990,625)	
9	CNXT	325,000	96.81	31,464,063	(24,903,125)	
10	COMS	350,000	79.06	27,671,875	(23,493,750)	
11	DCLK	250,000	134.00	33,500,000	(30,234,375)	
12	DELL	400,000	51.56	20,624,000	(12,724,000)	
13	INSP	200,000	109.06	21,812,500	(19,687,500)	
14	JDSU	110,000	126.50	13,915,000	(8,349,688)	
15	LU	350,000	77.12	26,992,000	(21,698,250)	
16	QCOM	75,000	179.31	13,448,250	(7,612,313)	
17				<u>219,140,188</u>	<u>(163,341,625)</u>	
18						
19						
20						
21						
22						
23						
24			58,118,438			
25			<u>(55,798,563)</u>			
26			2,319,875			
27						
28			5,739,000			
29	12.70%		<u>(7,086,417)</u>			
30			(1,347,417)			
31	(4,184,892)					
32			(4,039,000)			
33	5.20%		<u>2,901,525</u>			
34			(1,137,475)			
35						
36			(165,017)			
37			(1,620,000)			
38			(28,506)			
39			(191,239)			
40			-			
41			<u>(2,004,762)</u>			
42						
43			1.23%			
44						
45						



1387

Platinum

	I	J	L	M
1				
2				
4				
5		Purchase	Purchase	
6		Price	Amount	
7		39.51	7,902,000	
8		47.81	7,171,875	
9		20.19	6,560,938	
10		11.94	4,178,125	
11		13.06	3,265,625	
12		19.75	7,900,000	
13		10.63	2,125,000	
14		50.59	5,565,313	
15		15.13	5,293,750	
16		77.81	5,835,938	
17			<u>55,798,563</u>	
18				
19		Warrant/share	83,698	
20				
21			55,827,068	
22				
23	<u>Outside Basis</u>			
24	Additions:			
25		Purchase price		
26		Contribution of fixed income asset		
27		Prepaid fees		
28		Investor Financing		
29		Contribution for collar purchase		
30		Interest Income		
31		Additional contribution		
32		Total basis additions		
33	Reductions:			
34				
35		Loss on equity portfolio		
36		Loss on put option		
37		Loss on call option		
38		Misc. distribution		
39		Total basis reductions		
40	Net basis in SPV			
41				
42				
43	Notes:			
44		1. Any structuring fees can be included in outside basis.		
45				

## Platinum

= Redacted by the Permanent  
Subcommittee on Investigations

	N	O	P	Q	R	S	T	U
1								
2								
4								
5								
6	Closing		Total					
7	Price		Proceeds	Gain (Loss)		Bought	Proceeds	
8	42.05		8,410,000	508,000		\$ 7,910,177.70	\$ 8,406,719.71	
9	53.25		7,987,500	815,625		\$ 7,171,857.80	\$ 7,986,108.74	
10	22.16		7,200,781	639,844		\$ 6,567,004.70	\$ 7,208,686.19	
11	9.33		3,264,844	(913,281)		\$ 4,186,998.60	\$ 3,260,742.76	
12	11.78		2,945,313	(320,313)		\$ 3,270,340.05	\$ 2,946,792.33	
13	19.03		7,612,500	(287,500)		\$ 7,917,124.00	\$ 7,620,180.87	
14	8.83		1,765,625	(359,375)		\$ 2,134,812.50	\$ 1,766,099.81	
15	58.66		6,452,188	886,875		\$ 5,573,673.40	\$ 6,442,945.82	
16	17.56		6,146,875	853,125		\$ 5,304,250.00	\$ 6,144,045.09	
17	84.44		6,332,813	496,875		\$ 5,841,050.00	\$ 6,333,055.12	
18			<u>58,118,438</u>	<u>2,319,875</u>		<u>\$55,877,288.75</u>	<u>\$58,115,376.44</u>	
19								
20							\$ 2,238,088	
21	(28,506)							
22	98.75%		1.25%				\$ (81,787.31)	
23								
24				Total				55,750
25	55,101,080		697,482	55,798,563				(26,037)
26	101,000,000		1,500,000	102,500,000				
27	1,599,750		20,250	1,620,000				
28	188,849		2,390	191,239				
29	4,132,581		52,311	4,184,892				
30	-		-	-				
31	-		-	-				
32	162,022,260		2,272,434	164,294,694				
33								
34								
35	(159,008,978)		(2,012,772)	(161,021,750)				
36	(1,330,575)		(16,843)	(1,347,417)				
37	(1,123,256)		(14,218)	(1,137,475)				
38	-		-	-				
39	(161,462,809)		(2,043,833)	(163,506,642)				
40								
41	<u>559,451</u>		<u>228,601</u>	<u>788,052</u>				
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43								
44								
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1389

Platinum

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24	Rebated Commissions
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— = Redacted by the Permanent  
Subcommittee on Investigations

ST. LOUIS, MISSOURI  
WASHINGTON, D.C.  
KANSAS CITY, MISSOURI  
OVERLAND PARK, KANSAS  
PHOENIX, ARIZONA  
SANTA MONICA, CALIFORNIA  
IRVINE, CALIFORNIA

**BRYAN CAVE LLP**  
**245 PARK AVENUE**  
**NEW YORK, NEW YORK 10167**

EMPLOYER IDENTIFICATION NUMBER: 43-0602162

LONDON, ENGLAND  
RIYADH, SAUDI ARABIA  
KUWAIT CITY, KUWAIT  
ABU DHABI, UNITED ARAB EMIRATES  
DUBAI, UNITED ARAB EMIRATES  
HONG KONG  
ASSOCIATED OFFICE IN SHANGHAI

Mr. Chuck Wilk  
Quellos Group, LLC  
601 Union Street - 56th Floor  
Seattle, Washington 98101

January 17, 2002

OFN: C40921/119584

ON ACCOUNT OF PROFESSIONAL SERVICES AND  
ADVICE rendered in connection with the POINTS transaction (the  
"Transaction") including (i) various conferences with representatives of  
Quellos concerning the Transaction; (ii) a review of the United States  
Federal income tax issues involved with the Transaction including a  
substantive analysis of the Transaction under the Internal Revenue Code  
("Code") and Treasury Regulations, and case law pertaining to  
partnerships; (iii) factual due diligence, meetings and discussions with Mr.  
Schein, his counsel and representatives of Quellos; (iv) the preparation of  
revised drafts of a proposed tax opinion ("Opinion"); (v) research in  
connection with the Transaction including (a) a review of pending legislation  
and regulatory changes and their impact on the Opinion and (b) a review of  
recent case developments and their impact on the Opinion; (vi) discussions  
with Mr. [REDACTED]s counsel regarding an engagement letter and the  
preparation thereof; (vii) the preparation and revision of Investor  
Representations for Mr. [REDACTED] (viii) the negotiation of the final version of  
the Opinion and the rendering thereof; (ix) numerous telephone  
conversations, conferences and conference calls in connection with the  
foregoing, and (x) other miscellaneous services and advice

\$74,033.75

TO DISBURSEMENTS incurred and recorded to date in  
connection with the foregoing:

Long Distance Telephone Charges	\$93.17	
Copying Expenses	83.60	
Word Processing Charges	90.00	
Facsimile Charges	58.00	
Postage	5.85	
Staff Overtime, Conference		
Meals and Travel Expenses	<u>96.92</u>	<u>427.54</u>
<b>TOTAL DUE</b>		<b><u>\$74,461.29</u></b>

**INVOICE DUE UPON RECEIPT**

PLEASE RETURN REMITTANCE ADVICE WITH PAYMENT IN THE ENCLOSED ENVELOPE AND MAIL TO  
BRYAN CAVE LLP, 245 PARK AVENUE, NEW YORK, NY 10167  
OR WIRE TRANSFER FUNDS TO THE BANK OF NEW YORK, ROUTING #021000018. ACCOUNT #6302197634  
PLEASE INCLUDE REFERENCE TO INVOICE NUMBER. THANK YOU.

293136.01

**MEMO FROM JEFFREY S. CHAVKIN**  
partner

TO: Chuck Wilk

— = Redacted by the Permanent  
Subcommittee on Investigations

DATE: January 17, 2002

RE: [REDACTED] (119584)

I hope you had a good holiday season. As you know, we have rendered the Schein Opinion and, accordingly, I enclose herewith a statement for our unbilled time and disbursements on this matter.

You may recall that when we had our conference call in early November, we indicated that we had approximately \$22,000 of unbilled time on the Schein matter at that time and that we estimated that it would take approximately \$50,000 more to conclude the matter. As you can see from the enclosed statement, our final bill is very close to the estimate.

As I mentioned at one point last year, we have some unbilled time relating to a proposed transaction involving life insurance which, I believe, related to the chairman of Cosco. I would appreciate your letting me know whether this transaction is still alive.

Please let me know when you next plan to be in New York as Betsy and I would like to have dinner with you and Larry. We have enjoyed working with you on this matter and look forward to working with you on another transaction in the near future.

J.S.C.

cc: Elizabeth Smith

**Bryan Cave LLP**  
245 Park Avenue  
New York, New York 10167-0034  
Direct Number: (212) 692-1861 facsimile: (212) 692-1900

1392

01-25-02 09:29pm From-BRYAN CAVE LLP

+2126921800

T-088 P.08/13 F-318

**BRYAN CAVE LLP**

EMPLOYER IDENTIFICATION NUMBER: 43-068102

ST. LOUIS, MISSOURI  
WASHINGTON, D.C.  
NEW YORK, NEW YORK  
KANSAS CITY, MISSOURI  
JEFFERSON CITY, MISSOURI  
OVERLAND PARK, KANSAS  
PHOENIX, ARIZONA  
LOS ANGELES, CALIFORNIA  
IRVINE, CALIFORNIA

RIYADH, SAUDI ARABIA  
KUWAIT CITY, KUWAIT  
ABU DHABI UNITED ARAB EMIRATES  
DUBAI, UNITED ARAB EMIRATES  
HONG KONG  
SHANGHAI, PEOPLE'S REPUBLIC OF CHINA  
IN ASSOCIATION WITH BRYAN CAVE,  
A MULTINATIONAL PARTNERSHIP.  
LONDON, ENGLAND

Quellos Group, LLC  
667 Madison Avenue  
New York, New York 10021  
Attention Andrew Robbins

November 6, 2001  
Invoice # 740742  
Client # C40921

Payment is due upon  
Receipt

**STATEMENT OF ACCOUNT**

**BALANCE FORWARD:**

Balance per Statement Dated September 19, 2001	\$	142.00
<b>BALANCE FORWARD</b>	\$	142.00

**CURRENT CHARGES FOR MATTER:**

File #121186		
Platinum		
Expenses and Other Charges		14.97
<b>TOTAL CHARGES THIS INVOICE</b>	\$	14.97

<b>STATEMENT TOTAL</b>	\$	156.97
------------------------	----	--------

**INVOICE DUE UPON RECEIPT**

PLEASE RETURN REMITTANCE ADVICE WITH PAYMENT IN THE ENCLOSED ENVELOPE AND MAIL TO  
BRYAN CAVE LLP, P.O. BOX 80088, ST. LOUIS, MO 63180-0088  
OR WIRE TRANSFER FUNDS TO BANK OF AMERICA, N.A., ROUTING 498,000003 ACCOUNT #100101007978  
PLEASE INCLUDE REFERENCE TO INVOICE NUMBER. THANK YOU.

1393

01-25-02 09:28pm From-BRYAN CAVE LLP

+2126621800

T-000 P.09/13 F-316

**BRYAN CAVE LLP**

Quellos Group, LLC

November 6, 2001  
Invoice # 740742  
Client # C40921  
Page 2

For Legal Services Rendered Through October 31, 2001

File #121186  
Platinum

EXPENSES AND OTHER CHARGES

Copying expenses	14.40
Postage	.57

Total Expenses and Other Charges	\$ 14.97
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TOTAL CHARGES FOR THIS MATTER	\$ 14.97
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1394

01-26-02 03:28pm From-BRYAN CAVE LLP

+2126921800

T-098 P.10/13 F-316

**BRYAN CAVE LLP**

Queltes Group, LLC  
667 Madison Avenue  
New York, New York 10021  
Attention Andrew Robbins

November 6, 2001  
Invoice # 740742  
Client # C40921  
File # 121186

REMITTANCE ADVICE

CURRENT CHARGES

Expenses and Other Charges	14.97	
TOTAL CHARGES THIS INVOICE	\$	14.97

OUR RECORDS SHOW THE FOLLOWING INVOICES OUTSTANDING AS OF November 6, 2001

Balance Outstanding on Inv.	730515 (Dated 09/19/01)	142.00
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1395

01-25-02 09:29am From-BRYAN CAVE LLP

+2126821800

T-000 P.05/13 F-316

**BRYAN CAVE LLP**

EMPLOYER IDENTIFICATION NUMBER 43-0608102

ST. LOUIS, MISSOURI  
WASHINGTON, DC  
NEW YORK, NEW YORK  
KANSAS CITY, MISSOURI  
JEFFERSON CITY, MISSOURI  
OVERLAND PARK, KANSAS  
PHOENIX, ARIZONA  
LOS ANGELES, CALIFORNIA  
IRVINE, CALIFORNIA

RIYADH, SAUDI ARABIA  
KUWAIT CITY, KUWAIT  
ABU DHABI, UNITED ARAB EMIRATES  
DUBAI, UNITED ARAB EMIRATES  
HONG KONG  
SHANGHAI, PEOPLE'S REPUBLIC OF CHINA  
IN ASSOCIATION WITH BRYAN CAVE,  
A MULTINATIONAL PARTNERSHIP  
LONDON, ENGLAND

Quellos Group, LLC  
667 Madison Avenue  
New York, New York 10021  
Attention Andrew Robbins

September 19, 2001  
Invoice # 730515  
Client # C40921

Payment is due upon  
Receipt

STATEMENT OF ACCOUNT

BALANCE FORWARD:

Balance per Statement Dated June 26, 2001	\$	252.40
Payments and Other Credits	(	252.40)
<b>BALANCE FORWARD</b>	<b>\$</b>	<b>0.00</b>

CURRENT CHARGES FOR MATTER:

File #121186  
Platinum

Expenses and Other Charges		142.00
<b>TOTAL CHARGES THIS INVOICE</b>	<b>\$</b>	<b>142.00</b>

<b>STATEMENT TOTAL</b>	<b>\$</b>	<b>142.00</b>
------------------------	-----------	---------------

INVOICE DUE UPON RECEIPT

PLEASE RETURN REMITTANCE ADVICE WITH PAYMENT IN THE ENCLOSED ENVELOPE AND MAIL TO  
BRYAN CAVE LLP, P.O. BOX 60369, ST. LOUIS, MO 63160-3069  
OR WIRE TRANSFER FUNDS TO BANK OF AMERICA, N.A., ROUTING #081000022, ACCOUNT #100101007876  
PLEASE INCLUDE REFERENCE TO INVOICE NUMBER. THANK YOU

1396

01-25-02 09:29am From-BRYAN CAVE LLP

+2126921800

T-088 P.06/13 F-318

**BRYAN CAVE LLP**

Quellos Group, LLC

September 19, 2001  
Invoice # 730515  
Client # C40921  
Page 2

For Legal Services Rendered Through August 31, 2001

File #121186  
Platinum

EXPENSES AND OTHER CHARGES

08/31/01	National Corporate Research	\$	142.00
	Good Standing		
	Total Expenses and Other Charges	\$	142.00
	TOTAL CHARGES FOR THIS MATTER	\$	142.00

1397

01-25-02 03:29pm From-BRYAN CAVE LLP

+2126921900

T-000 P.07/13 F-916

**BRYAN CAVE LLP**

Quellos Group, LLC  
667 Madison Avenue  
New York, New York 10021  
Attention Andrew Robbins

September 19, 2001  
Invoice # 730515  
Client # C40921  
File # 121186

CURRENT CHARGES

REMITTANCE ADVICE

Expenses and Other Charges

142.00

TOTAL CHARGES THIS INVOICE

\$ 142.00

1398

ST. LOUIS, MISSOURI  
WASHINGTON, D.C.  
KANSAS CITY, MISSOURI  
OVERLAND PARK, KANSAS  
PHOENIX, ARIZONA  
SANTA MONICA, CALIFORNIA  
IRVINE, CALIFORNIA

**BRYAN CAVE LLP**  
245 PARK AVENUE  
NEW YORK, NEW YORK 10167  
EMPLOYER IDENTIFICATION NUMBER: 43-0602162

LONDON, ENGLAND  
RIYADH, SAUDI ARABIA  
KUWAIT CITY, KUWAIT  
ABU DHABI, UNITED ARAB EMIRATES  
DUBAI, UNITED ARAB EMIRATES  
HONG KONG  
ASSOCIATED OFFICE IN SHANGHAI

June 22, 2001

Mr. Andrew Robbins  
Quellos Group, LLC  
667 Madison Avenue  
25th Floor  
New York, New York 10021

OFN: C40921/117750/120071/121185/121186

TO PROFESSIONAL SERVICES AND ADVICE  
rendered through in connection with the Burgundy,  
Titanium, Platinum and Toren matters including matters in  
connection with the liquidation of the Isle of Man entity, the  
completion of transfer documents for Burgundy Limited,  
the preparation of an Assignment and Consent for Burgundy  
I, LLC, a review of the Operating Agreement regarding the  
same and the finalization of Consents and Assignments for  
Burgundy; revisions to liquidation documentation,  
numerous telephone conversations with representatives of  
Quellos in connection with the foregoing and other  
miscellaneous services and advice in connection with the  
foregoing ..... \$3,640.00

TO DISBURSEMENTS incurred and  
recorded to date in connection with the foregoing:

Long Distance Telephone Charges	\$ 3.00	
Copying Expenses	25.20	
National Corporate Research		
Formation Filings	738.00	
Delivery and Messenger Charges	7.00	
Facsimile Charges	9.00	
Postage	.99	\$783.19
<b>TOTAL DUE</b>		<b><u>\$4,423.19</u></b>

INVOICE DUE UPON RECEIPT

PLEASE RETURN REMITTANCE ADVICE WITH PAYMENT IN THE ENCLOSED ENVELOPE AND MAIL TO  
BRYAN CAVE LLP, 245 PARK AVENUE, NEW YORK, NY 10167  
OR WIRE TRANSFER FUNDS TO THE BANK OF NEW YORK, ROUTING #021000016, ACCOUNT #6302197634  
PLEASE INCLUDE REFERENCE TO INVOICE NUMBER. THANK YOU.

278899.01

1399

**BRYAN CAVE LLP**

ST. LOUIS, MISSOURI  
WASHINGTON, D.C.  
NEW YORK, NEW YORK  
KANSAS CITY, MISSOURI  
OVERLAND PARK, KANSAS  
PHOENIX, ARIZONA  
SANTA MONICA, CALIFORNIA  
IRVINE, CALIFORNIA

EMPLOYER IDENTIFICATION NUMBER: 43-0602162

RIYADH, SAUDI ARABIA  
KUWAIT CITY, KUWAIT  
ABU DHABI, UNITED ARAB EMIRATES  
DUBAI, UNITED ARAB EMIRATES  
HONG KONG  
SHANGHAI, PEOPLE'S REPUBLIC OF CHINA  
IN ASSOCIATION WITH BRYAN CAVE,  
A MULTINATIONAL PARTNERSHIP.  
LONDON, ENGLAND

Quellos Group, LLC  
667 Madison Avenue  
New York, New York 10021

January 9, 2001  
Invoice # 682030  
Client # C40921

Payment is due upon  
Receipt

STATEMENT OF ACCOUNT

BALANCE FORWARD:

— = Redacted by the Permanent  
Subcommittee on Investigations

BALANCE FORWARD \$ 0.00

CURRENT CHARGES FOR MATTER:

File #121186;  
Platinum

Fees for Legal Services \$ 10,650.00  
Expenses and Other Charges 186.41

TOTAL CHARGES THIS INVOICE \$ 10,836.41

STATEMENT TOTAL \$ 10,836.41

POSTED  
JMD

INVOICE DUE UPON RECEIPT

PLEASE RETURN REMITTANCE ADVICE WITH PAYMENT IN THE ENCLOSED ENVELOPE AND MAIL TO  
BRYAN CAVE LLP, P.O. BOX 503089, ST. LOUIS, MO 63150-3089  
OR WIRE TRANSFER FUNDS TO NATIONSBANK, N.A., ROUTING #081000032, ACCOUNT #100101007976  
PLEASE INCLUDE REFERENCE TO INVOICE NUMBER. THANK YOU.

1400

**BRYAN CAVE LLP**

Quellos Group, LLC

January 9, 2001  
Invoice # 682030  
Client # C40921  
Page 2

For Legal Services Rendered Through December 31, 2000

File #121186  
Platinum

09/28/00 C. M. Lois	Conferred with E. Smith; prepared and filed papers for the formation of Platinum Trading Partners LLC; telephone conference with agency for filing and representation; confirmed filing and ordered corporate kits.	.50 hrs.	77.50
09/28/00 E. A. Smith	Telephone conference with B. Hanson; conference regarding setting up LLCs in Delaware and conference with C. Lois on same.	.75 hrs.	318.75
09/29/00 E. A. Smith	Telephone conference with Chuck Wilk; discuss formation of Platinum Trading Partners LLC in Delaware; discuss potential client for transaction.	.50 hrs.	212.50
10/19/00 E. A. Smith	Platinum - Conversation with B. Hanson on formation of this company; conference with L. Phillips.	.50 hrs.	212.50
10/20/00 C. M. Lois	Prepared draft of LLC operating agreement for Titanium and Platinum Trading Partners LLCs; conferred with E. Smith.	.25 hrs.	38.75
10/20/00 E. A. Smith	Platinum - Telephone conference with B. Hanson on operating agreement and drafting LLC agreement.	1.50 hrs.	637.50
11/06/00 E. A. Smith	Work on formation issues; conference with Brian Hanson; conference with Lana Phillips.	1.25 hrs.	531.25
11/15/00 J. S. Chavkin	Quellos - Platinum Transaction - Call from Betsy Smith re possible opinion corporate opinion being requested by BofA		

## BRYAN CAVE LLP

Quellos Group, LLC

January 9, 2001  
 Invoice # 682030  
 Client # C40921  
 Page 3

	.30 hrs.	135.00
11/15/00 E. A. Smith	Telephone conference with C. Wilk; discuss opinions requested by Banks.	
	1.25 hrs.	531.25
11/16/00 J. S. Chavkin	conference Smith re opinion for Quellos Platinum	
	.30 hrs.	135.00
11/16/00 P. A. Eisenberg	Conference Betsy Smith - conference call re: Opinion.	
	.50 hrs.	230.00
11/16/00 E. A. Smith	Work on deriving what is needed for opinion for Banks; conference with Lana Phillips; conference with C. Wilk.	
	2.00 hrs.	850.00
11/16/00 L. M. Phillips	Edit Platinum operating agreement; email agreement to Chuck Wilke, Andy Robbins, and Brian Hanson.	
	1.00 hrs.	170.00
11/17/00 H. S. Rheiner	Prepare opinion regarding collar for Bank of America; confer regarding same.	
	3.00 hrs.	750.00
11/17/00 J. S. Chavkin	conf Smith; prepared template for opinion - Quellos Platinum	
	1.00 hrs.	450.00
11/17/00 E. A. Smith	Work with Heather Rheiner and Lana Phillips on getting C. Wilk opinion requested by Bank; review draft sent.	
	1.25 hrs.	531.25
11/17/00 L. M. Phillips	Conference call with Heather Rheiner, Betsy Smith, John Barrie, and Chuck Wilk regarding opinion letter for Platinum transaction; call with Heather Rheiner to discuss opinion; meet with A.I. Appel regarding edits to "more likely than not" opinion letter.	
	1.75 hrs.	297.50
11/20/00 H. S. Rheiner	Confer regarding opinion for collar for Bank of America.	
	.50 hrs.	125.00

**BRYAN CAVE LLP**

Quellos Group, LLC

January 9, 2001  
Invoice # 682030  
Client # C40921  
Page 4

11/20/00 P. A. Eisenberg	Review Opinion. .25 hrs.	115.00
11/20/00 E. A. Smith	Follow up with Peter Eisenberg's giving opinion to Lana Phillips for banks. .25 hrs.	106.25
11/20/00 L. M. Phillips	Edit opinion letter for Platinum transaction; edit Member's Certificate for execution; call with Heather Rheiner regarding due diligence issues; voicemail to Chuck Wilk regarding status of opinion; call to Brian Hanson regarding necessary documentation for execution of opinion letter; call with Carla Lois regarding certificate of good standing and claims inquiry; email to Bryan Cave lawyers and paralegal regarding due diligence. 4.00 hrs.	680.00
11/21/00 P. A. Eisenberg	Opinion. .25 hrs.	115.00
11/21/00 E. A. Smith	Telephone conference with C. Wilk on opinion for Bank Amer & HSBC; telephone conference with Lana Phillips on same. .50 hrs.	212.50
11/21/00 L. M. Phillips	Calls with Brian Hanson from Quellos regarding Platinum opinion; calls to Heather Rheiner regarding Platinum opinion; make final edits to Platinum opinion; meet with P.A. Eisenberg to sign Platinum opinion; Fedex and fax opinion to Brian Hanson. 3.00 hrs.	510.00
11/21/00 H. S. Rheiner	Confer regarding opinion for collar for Bank of America. .50 hrs.	125.00
11/22/00 E. A. Smith	Review and sign opinion for Banks. .50 hrs.	212.50
11/22/00 L. M. Phillips	Revise opinion to HSBC; fax and Fedex revised opinion to Brian Hanson; calls and emails to H.S. Rheiner regarding membership certificates for Platinum and amendment to operating agreement;	



**BRYAN CAVE LLP**

Quellos Group, LLC

January 9, 2001  
 Invoice # 682030  
 Client # C40921  
 Page 5

	create membership certificates representing interests for Barnville and EACS; draft letter to Raj Puri and Fedex original certificates to Raj Puri; email amendment to operating agreement to Brian Hanson to be forwarded to EACS for signatures; fax membership certificates to Brian Hanson and H.S. Rheiner.	7.50 hrs.	1,275.00
11/22/00 H. S. Rheiner	Prepare membership certificates and amendment to operating agreement; review issues regarding same; telephone conferences with L. Phillips and C. Wilk regarding same.	2.25 hrs.	562.50
11/22/00 J. Y. Sung	Research membership certificate requirements (Platinum Trading Partners). Review operating agreement. Telephone call(s) with National Corporate Research and meeting w/ L. Phillips.	.50 hrs.	77.50
11/27/00 L. M. Phillips	Call and email from Brian Hanson regarding Platinum amended operating agreement and membership certificates.	.50 hrs.	85.00
11/29/00 L. M. Phillips	Call with Brian Hanson regarding Platinum LLC membership certificates; call with Dorelle Spears at Paul Weiss regarding Platinum membership certificates and book; courier five certificates to D. Spears with letter; courier LLC book to Dorelle Spears with letter; email legend language for membership certificates to D. Spears; email Brian Hanson regarding status of certificates and book.	2.00 hrs.	340.00
Total Hours		40.10	
Total Fees for Legal Services			\$ 10,650.00

1404

**BRYAN CAVE LLP**

Quellos Group, LLC

January 9, 2001  
Invoice # 682030  
Client # C40921  
Page 6

EXPENSES AND OTHER CHARGES

12/15/00	National Corporate Research	\$	57.00
	Tax Lien and Judgment Search		
12/22/00	National Corporate Research		58.00
	Certificate of Good Standing		
	Telecopier/fax charges		19.00
	Delivery & messenger service		45.02
	Long distance telephone charges		7.39
	Total Expenses and Other Charges	\$	186.41
	TOTAL CHARGES FOR THIS MATTER	\$	10,836.41

1405

**BRYAN CAVE LLP**

Quellos Group, LLC  
667 Madison Avenue  
New York, New York 10021

January 9, 2001  
Invoice # 682030  
Client # C40921  
File # 121186

REMITTANCE ADVICE

CURRENT CHARGES

Fees for Legal Services	\$ 10,650.00
Expenses and Other Charges	186.41
<b>TOTAL CHARGES THIS INVOICE</b>	<b>\$ 10,836.41</b>

**D**

— Redacted by the Permanent  
Subcommittee on Investigations

# **[REDACTED] Cobalt Trading Partners LLC**

## *Cash Flow Analysis as of 12/13/01*

### **[REDACTED] Checking Account Reconciliation**

[REDACTED] wire to HSBC  
Transfer to Barnville  
Transfer to Cobalt for Collar Purchase  
Transfer to Quellos  
Transfer to Euram  
Credit from Cobalt  
Credit from Euram  
Credit from Barnville  
Interest Earned at HSBC

Debits	Credits	Account Balance
	64,300,000	\$ 64,300,000
60,001,295		4,298,705
2,442,282		1,856,423
1,200,128		656,295
606,074		50,221
	1,743	51,964
	427	52,391
	42,258	94,650
	16	\$ 94,665

### **Cobalt Checking Account Reconciliation**

[REDACTED] Transfer to Cobalt for Collar Purchase  
HSBC Interest Payment  
Transfer to Custody for Collar Purchase  
Transfer to [REDACTED]  
HSBC Monthly Analysis Charge  
Transfer from HSBC Holding Account  
Wire transfer to Cobalt Goldman Sachs Account

Debits	Credits	Account Balance
	2,442,282	\$ 2,442,282
	119	\$ 2,442,401
2,440,539		1,862
1,743		119
20		99
	18,336	18,435
18,435		\$ -

### **Cobalt Custody Account Reconciliation**

Initial Custody Balance via Barnville  
Transfer from Cobalt Checking to Custody for Collar Purchase  
Equity Portfolio Cost  
Collar Cost  
Equity Portfolio Sale Proceeds (net of commission)  
Collar Unwind Proceeds  
Wire transfer to Cobalt Goldman Sachs Account

Debits	Credits	Account Balance
	\$ 59,964,098	\$ 59,964,098
	2,440,539	62,404,637
59,964,098		2,440,539
2,440,539		-
	66,432,240	66,432,240
2,795,270		63,636,970
63,636,970		\$ -

Total Cash Available to [REDACTED] Cobalt as of 12/13/01

\$ 63,750,070

Initial Cash Investment

\$ 64,300,000

Net Cost of Transaction

\$ (549,930)

Confidential

Quellos Custom Strategies, LLC

Mary Agnes Pan  
Senior Vice President  
HSBC Bank USA  
452 Fifth Avenue  
New York, NY 10018

— = Redacted by the Permanent  
Subcommittee on Investigations

November 7, 2001

Dear Mary:

\_\_\_\_\_ hereby irrevocably directs and authorizes HSBC to transfer \$1,200,128 from the account maintained by \_\_\_\_\_ with HSBC, Account No.134703472, to the account maintained by Quellos Custom Strategies, LLC with Bank of America,

Bank of America  
ABA # 125000024  
Quellos Custom Strategies, LLC  
A/c # \_\_\_\_\_

Such transfer is to be made for value November 7, 2001.

HSBC hereby acknowledges that the instructions set forth above are in connection with certain transactions for which it or an affiliate has received substantial consideration. HSBC hereby acknowledges and agrees that any failure on its part to execute the instructions set forth above may cause substantial harm for which subsequent performance would be an inadequate remedy. HSBC agrees that it shall be liable for all losses, damages or expenses direct or indirect, sustained by the undersigned resulting from any failure by HSBC to execute such instructions at such time and in the manner instructed, provided that HSBC shall not be liable for any such losses, damages or expenses to the extent HSBC's failure to execute shall be the result of any actions taken, or any failure to act, by the undersigned or any party (other than HSBC) to the transactions referenced above, or shall be the result of any event, circumstance or cause beyond the control of HSBC (including, without limitation, force majeure, act of state, market or payment system disruption) that has or reasonably would be expected to have a material adverse effect on HSBC's ability to execute the above instructions.

Each of the undersigned agrees that its directions and authorizations set forth herein are irrevocable and cannot be changed or withdrawn under any circumstances.

This letter may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

1409

Sincerely yours,

[REDACTED]

[REDACTED] = Redacted by the Permanent  
Subcommittee on Investigations

By \_\_\_\_\_

Agreed and accepted as of  
the date first above written.

HSBC Bank USA

By: \_\_\_\_\_  
Name:  
Title:

— = Redacted by the Permanent  
Subcommittee on Investigations

ST. LOUIS, MISSOURI  
WASHINGTON, D.C.  
KANSAS CITY, MISSOURI  
OVERLAND PARK, KANSAS  
PHOENIX, ARIZONA  
SANTA MONICA, CALIFORNIA  
IRVINE, CALIFORNIA

**BRYAN CAVE LLP**  
**245 PARK AVENUE**  
**NEW YORK, NEW YORK 10167**

EMPLOYER IDENTIFICATION NUMBER: 43-0602162

LONDON, ENGLAND  
RIYADH, SAUDI ARABIA  
KUWAIT CITY, KUWAIT  
ABU DHABI, UNITED ARAB EMIRATES  
DUBAI, UNITED ARAB EMIRATES  
HONG KONG  
ASSOCIATED OFFICE IN SHANGHAI

Mr. Chuck Wilk  
Quellos Group, LLC  
601 Union Street - 56th Floor  
Seattle, Washington 98101

January 17, 2002

OFN: C40921/119584

ON ACCOUNT OF PROFESSIONAL SERVICES AND  
ADVICE rendered in connection with the POINTS transaction (the  
"Transaction") including (i) various conferences with representatives of  
Quellos concerning the Transaction; (ii) a review of the United States  
Federal income tax issues involved with the Transaction including a  
substantive analysis of the Transaction under the Internal Revenue Code  
("Code") and Treasury Regulations, and case law pertaining to  
partnerships; (iii) factual due diligence, meetings and discussions with Mr.  
[REDACTED], his counsel and representatives of Quellos; (iv) the preparation of  
revised drafts of a proposed tax opinion ("Opinion"); (v) research in  
connection with the Transaction including (a) a review of pending legislation  
and regulatory changes and their impact on the Opinion and (b) a review of  
recent case developments and their impact on the Opinion; (vi) discussions  
with Mr. [REDACTED]'s counsel regarding an engagement letter and the  
preparation thereof; (vii) the preparation and revision of Investor  
Representations for Mr. [REDACTED]; (viii) the negotiation of the final version of  
the Opinion and the rendering thereof; (ix) numerous telephone  
conversations, conferences and conference calls in connection with the  
foregoing, and (x) other miscellaneous services and advice

\$74,033.75

TO DISBURSEMENTS incurred and recorded to date in  
connection with the foregoing:

Long Distance Telephone Charges	\$93.17	
Copying Expenses	83.60	
Word Processing Charges	90.00	
Facsimile Charges	58.00	
Postage	5.85	
Staff Overtime, Conference		
Meals and Travel Expenses	<u>96.92</u>	<u>427.54</u>
<b>TOTAL DUE</b>		<b><u>\$74,461.29</u></b>

**INVOICE DUE UPON RECEIPT**

PLEASE RETURN REMITTANCE ADVICE WITH PAYMENT IN THE ENCLOSED ENVELOPE AND MAIL TO  
BRYAN CAVE LLP, 245 PARK AVENUE, NEW YORK, NY 10167  
OR WIRE TRANSFER FUNDS TO THE BANK OF NEW YORK, ROUTING #021000018, ACCOUNT #6302197634  
PLEASE INCLUDE REFERENCE TO INVOICE NUMBER. THANK YOU.

293136.01



1411

**MEMO FROM JEFFREY S. CHAVKIN**  
**partner**

TO: Chuck Wilk

DATE: January 17, 2002

RE: [REDACTED] (119584)

---

I hope you had a good holiday season. As you know, we have rendered the Schein Opinion and, accordingly, I enclose herewith a statement for our unbilled time and disbursements on this matter.

You may recall that when we had our conference call in early November, we indicated that we had approximately \$22,000 of unbilled time on the Schein matter at that time and that we estimated that it would take approximately \$50,000 more to conclude the matter. As you can see from the enclosed statement, our final bill is very close to the estimate.

As I mentioned at one point last year, we have some unbilled time relating to a proposed transaction involving life insurance which, I believe, related to the chairman of Cosco. I would appreciate your letting me know whether this transaction is still alive.

Please let me know when you next plan to be in New York as Betsy and I would like to have dinner with you and Larry. We have enjoyed working with you on this matter and look forward to working with you on another transaction in the near future.

J.S.C.

cc: Elizabeth Smith

**Bryan Cave LLP**  
**245 Park Avenue**  
**New York, New York 10167-0034**  
**Direct Number: (212) 692-1861 facsimile: (212) 692-1900**

1412

**4**



**POINT - One Year Duration (Warrant Outstanding)**  
**One Year Profitability Analysis Projected P&L**

Portfolio Cost Basis	\$ 242,336,563			
Portfolio Trade Price	120,523,513			
Approximate Initial Loss	\$ 121,813,050			
		Projected P&L (Stock Down 20%)	Projected P&L (Stock Flat)	Projected P&L (Stock Up 20%)
Six-k sale proceeds	100,436,261			144,628,216
Portfolio value on STV purchase date	(120,523,513)		120,523,513	(120,523,513)
Gain/(loss) on stock	(20,087,252)			24,104,703
Proceeds from sale of 100 day put				
Cost of long 100 day put				
Gain/(loss) on 100 day put	(17,765,335)		(17,765,335)	(17,765,335)
Cost of covering 100 day call				
Proceeds from short 100 day call	14,945,059		14,945,059	14,945,059
Gain/(loss) on 100 day call				
Warrant premium	58,611,000		58,611,000	58,611,000
Interest on warrant premium (7% / 12 months)	4,102,770		4,102,770	4,102,770
Gain/(loss) on warrant	62,713,770		62,713,770	62,713,770
Total trading gain/(loss)	39,806,242		59,893,494	83,998,197
Prepaid interest (includes 1% purchase premium)	(3,899,701)		(3,899,701)	(3,899,701)
Interest on bank loan used to settle seller financing (7% / 8.6 months)	(6,093,133)		(6,093,133)	(6,093,133)
Investment gain/(loss)	29,813,408		49,900,660	74,005,362
Quadrant structuring & advisory fees	(2,400,000)		(2,400,000)	(2,400,000)
Net gain/(loss)	27,413,408		47,500,660	71,605,362
Return Analysis				
Periodic Return A - based on all costs (see assumption 4)	20.2%		35.0%	52.8%
Periodic Return B - based on initial cash requirements (see assumption 5)	300.6%		520.8%	785.1%

Assumptions: 1. The portfolio value fluctuates within the collar strike range for the first 100 days (i.e. both the short-term put option and short-term call option expire out-of-the-money).

2. The above scenarios reflect the long-term movement in the equity portfolio value with fund borrowed from another source.

3. The denominator used in the Return Analysis - Periodic Return A includes the purchase price of the STV, the cost of the collar, prepaid interest, interest on the long-term bank loan, and structuring/advisory fees.

4. The denominator used in the Return Analysis - Periodic Return B includes the cost of the collar, prepaid interest, and structuring/advisory fees.

5. The warrant is still outstanding.

**POINT - One Year Duration (Warrant Hedged)**  
**On: Year Profitability Analysis: Projected P&L**

Portfolio Cost Basis	\$ 242,336,563			
Portfolio Trade Price	120,523,513			
Approximate Initial Loss	\$ 121,813,050			
		Projected P&L (Stock Down 20%)	Projected P&L (Stock Flat)	Projected P&L (Stock Up 20%)
Stock sale proceeds		100,436,261	120,523,513	144,628,216
Portfolio value on SPV purchase date		(120,523,513)	(120,523,513)	(120,523,513)
Gain/(loss) on stock		(20,087,252)		24,104,703
Proceeds from sale of 100 day put				
Cost of long 100 day put		(17,765,335)	(17,765,335)	(17,765,335)
Gain/(loss) on 100 day put				
Cost of covering 100 day call				
Proceeds from short 100 day call		14,945,059	14,945,059	14,945,059
Gain/(loss) on 100 day call				
Warrant premium		58,611,000	58,611,000	58,611,000
Interest on warrant premium (7% / 12 months)		4,102,770	4,102,770	4,102,770
Interest on warrant hedge		(34,686,667)	(30,607,223)	(67,851,157)
Gain/(loss) on warrant		28,027,103	12,105,547	(5,337,357)
Total trading gain/(loss)		5,119,575	9,285,671	16,047,040
Prepaid interest (includes 1% purchase premium)		(3,899,701)	(3,899,701)	(3,899,701)
Interest on bank loan used to settle seller financing (7% / 8.6 months)		(6,093,133)	(6,093,133)	(6,093,133)
Investment gain/(loss)		(4,873,259)	(707,163)	6,054,206
Quidra structuring & advisory fees		(2,400,000)	(2,400,000)	(2,400,000)
Net gain/(loss)		(7,273,259)	(3,107,163)	3,654,206
Return Analysis				
Periodic Return A - based on all costs (see assumption 4)		-5.4%	-2.3%	2.7%
Periodic Return B - based on initial cash requirements (see assumption 5)		-70.8%	-31.1%	40.1%

- Assumptions:
1. The portfolio value fluctuates within the collar strike range for the first 100 days (i.e. both the short-term put option and short-term call option expire out-of-the-money).
  2. The denominator used in the Return Analysis - Periodic Return A includes the purchase price of the SPV, the cost of the collar, prepaid interest, interest on the long-term bank loan, and structuring/advisory fees.
  3. The denominator used in the Return Analysis - Periodic Return B includes the cost of the collar, prepaid interest, and structuring/advisory fees.
  4. The warrant is still outstanding.
  5. The warrant has been hedged by purchasing a 4 year, 120 spot warrant in the market.

**POINT - Five Year Duration (Warrant Outstanding)**  
**5 Year Profitability Analysis: Projected P&L**

Portfolio Cost Basis	\$ 242,336,563			
Portfolio Trade Price	\$ 120,523,513			
Approximate Initial Loss	\$ 121,813,050			
		Projected P&L (Stock Down 50%)	Projected P&L (Stock Flat)	Projected P&L (Stock Up 50%)
Stock sale proceeds	80,249,009			
Portfolio value on SPV purchase date	(120,523,513)		120,523,513	180,783,270
Gain/(loss) on stock	(40,174,504)		(120,523,513)	(120,523,513)
				60,261,757
Proceeds from sale of 100 day put	-			
Cost of long 100 day put	(17,765,335)		(17,765,335)	(17,765,335)
Gain/(loss) on 100 day put				
Cost of covering 100 day call	-			
Proceeds from short 100 day call	14,945,059		14,945,059	14,945,059
Gain/(loss) on 100 day call				
Warrant premium	58,611,000			
Interest on warrant premium (7% / 60 months)	20,513,850		20,513,850	20,513,850
Gain/(loss) on warrant				
		79,124,850	79,124,850	79,124,850
Total trading gain/(loss)	36,130,070		76,304,574	136,566,331
Prepaid interest (includes 1% purchase premium)	(3,899,701)		(3,899,701)	(3,899,701)
Interest on bank loan used to settle seller financing (7% / 56.6 months)	(39,839,717)		(39,839,717)	(39,839,717)
Investment gain/(loss)	(7,609,348)		32,563,156	92,826,513
Quindra structuring & advisory fees	(2,400,000)		(2,400,000)	(2,400,000)
Net gain/(loss)	(10,209,549)		30,163,156	90,426,513
Return Analysis				
Periodic Return A - based on all costs (see assumption 4)	-5.9%		17.8%	53.1%
Periodic Return B - based on initial cash requirements (see assumption 5)	-109.8%		230.8%	991.5%

Assumptions: 1. The portfolio value fluctuates within the 100 day collar strike range (i.e. both the short-term put option and short-term call option expire out-of-the-money).

2. The above scenarios reflect the long-term movement in the equity portfolio value with funds borrowed from another source.

3. The denominator used in the Return Analysis - Periodic Return A includes the purchase price of the SPV, the cost of the collar, prepaid interest, interest on the long-term bank loan, and structuring/advisory fees.

4. The denominator used in the Return Analysis - Periodic Return B includes the cost of the collar, prepaid interest, and structuring/advisory fees.

**B**

**POINT - One Year Duration (Warrant Outstanding)**  
**One Year Profitability Analysis: Projected P&L**

Portfolio Cost Basis	\$ 300,584,525			
Portfolio Trade Price	118,985,294			
Approximate Initial Loss	\$ 181,599,231			
		Projected P&L (Stock Down 20%)	Projected P&L (Stock Flat)	Projected P&L (Stock Up 20%)
Stock sale proceeds	99,154,412		118,985,294	142,782,343
Portfolio value on SPV purchase date	(118,985,294)	(19,830,882)	(118,985,294)	(118,985,294)
Gain/(loss) on stock				23,797,059
Proceeds from sale of 100 day put				
Cost of long 100 day put	(19,811,051)	(19,811,051)	(19,811,051)	(19,811,051)
Gain/(loss) on 100 day put				
Cost of covering 100 day call				
Proceeds from short 100 day call	16,241,493	16,241,493	16,241,493	16,241,493
Gain/(loss) on 100 day call				
Warrant premium	57,863,000		57,863,000	57,863,000
Interest on warrant premium (7% / 12 months)	4,050,410		4,050,410	4,050,410
Gain/(loss) on warrant		61,913,410		61,913,410
Total trading gain/(loss)	38,212,970	38,212,970	58,345,852	82,140,911
Prepaid interest (includes 1% purchase premium)	(5,230,441)	(5,230,441)	(5,230,441)	(5,230,441)
Interest on bank loan used to settle seller financing (7% / 8.6 months)	(6,015,368)	(6,015,368)	(6,015,368)	(6,015,368)
Investment gain/(loss)	27,267,161	27,267,161	47,098,043	70,895,102
Quadra structuring & advisory fees	(3,640,000)	(3,640,000)	(3,640,000)	(3,640,000)
Net gain/(loss)	23,627,161	23,627,161	43,458,043	67,255,102
Return Analysis				
Periodic Return A - based on all costs (see assumption 4)	17.2%		31.6%	48.9%
Periodic Return B - based on initial cash requirements (see assumption 5)	189.9%		349.3%	540.6%

Assumptions: 1. The portfolio value fluctuates within the collar strike range for the first 100 days (i.e. both the short-term put option and short-term call option expire out-of-the-money)

2. The above scenarios reflect the long-term movement in the equity portfolio value with fund borrowed from another source

3. The denominator used in the Return Analysis - Periodic Return A includes the purchase price of the SPV, the cost of the collar, prepaid interest, interest on the long-term bank loan, and structuring/advisory fees.

4. The denominator used in the Return Analysis - Periodic Return B includes the cost of the collar, prepaid interest, and structuring/advisory fees.

5. The warrant is still outstanding.



**POINT - One Year Duration (Warrant Hedged)**  
**One Year Profitability Analysis: Projected P&L**

Portfolio Cost Basis	\$ 300,564,525		
Portfolio Trade Price	\$ 118,985,294		
Approximate Initial Loss	\$ 181,579,231		
		Projected P&L (Stock Down 20%)	Projected P&L (Stock Up 20%)
Stock sale proceeds		99,154,412	142,782,383
Portfolio value on STV purchase date		(118,985,294)	(118,985,294)
Gain/(loss) on stock		(19,830,882)	23,797,099
Proceeds from sale of 100 day put			
Cost of long 100 day put		(19,881,051)	(19,881,051)
Gain/(loss) on 100 day put		(19,881,051)	
Cost of covering 100 day call			
Proceeds from short 100 day call		16,241,493	16,241,493
Gain/(loss) on 100 day call		16,241,493	
Warrant premium		57,863,000	57,863,000
Interest on warrant premium (7% / 12 months)		4,050,410	4,050,410
Cost of warrant hedge		(34,243,568)	(32,183,909)
Gain/(loss) on warrant		27,669,842	(5,170,499)
Total trading gain/(loss)		4,199,002	14,987,002
Prepaid interest (includes 1% purchase premium)		(5,230,441)	(5,230,441)
Interest on bank loan used to settle seller financing (7% / 8.6 months)		(6,015,568)	(6,015,568)
Investment gain/(loss)		(7,046,807)	3,241,193
Quadra structuring & advisory fees		(3,640,000)	(3,640,000)
Net gain/(loss)		(10,686,807)	10,193
Return Analysis			
Periodic Return A - based on all costs (see assumption 4)		-7.8%	0.1%
Periodic Return B - based on initial cash requirements (see assumption 5)		-82.4%	0.6%

- Assumptions:
1. The portfolio value fluctuates within the collar strike range for the first 100 days (i.e. both the short-term put option and short-term call option expire out-of-the-money)
  2. The denominator used in the Return Analysis - Periodic Return A includes the purchase price of the STV, the cost of the collar, prepaid interest, interest on the long-term bank loan, and structuring/advisory fee
  3. The denominator used in the Return Analysis - Periodic Return B includes the cost of the collar, prepaid interest, and structuring/advisory fee.
  4. The warrant is still outstanding.
  5. The warrant has been hedged by purchasing a 4 year, 120 spot warrant in the market.

**POINT - Five Year Duration (Warrant Outstanding)**  
**5 Year Profitability Analysis: Projected P&L**

Portfolio Cost Basis	\$ 300,584,525			
Portfolio Trade Price	118,985,294			
Approximate Initial Loss	\$ 181,599,231			
		Projected P&L (Stock Down 50%)	Projected P&L (Stock Flat)	Projected P&L (Stock Up 50%)
Stock sale proceeds	79,323,529		118,985,294	178,477,941
Portfolio value on SPV purchase date	(118,985,294)		(118,985,294)	(118,985,294)
Gain/(loss) on stock	(39,661,765)		-	59,492,647
Proceeds from sale of 100 day put				
Cost of long 100 day put	(19,811,051)		(19,811,051)	(19,811,051)
Gain/(loss) on 100 day put				
Cost of covering 100 day call				
Proceeds from short 100 day call	16,241,493		16,241,493	16,241,493
Gain/(loss) on 100 day call				
Warrant premium				
Interest on warrant premium (7% / 60 months)	57,863,000		57,863,000	57,863,000
Gain/(loss) on warrant	20,252,050		20,252,050	20,252,050
Total trading gain/(loss)		78,115,050	78,115,050	78,115,050
Prepaid interest (includes 1% purchase premium)	34,883,717		74,545,492	134,038,139
Interest on bank loan used to settle seller financing (7% / 56.6 months)	(5,230,441)		(5,230,441)	(5,230,441)
Investment gain/(loss)	(39,331,250)		(39,331,250)	(39,331,250)
Quadra structuring & advisory fees	(9,477,964)		29,583,801	89,476,448
Net gain/(loss)	(3,440,000)		(3,440,000)	(3,440,000)
	(13,517,564)		26,349,501	85,536,448
Return Analysis				
Periodic Return A - based on all costs (see assumption 4)	-7.8%		15.4%	50.3%
Periodic Return B - based on initial cash requirements (see assumption 5)	-107.1%		211.8%	690.0%

Assumptions: 1. The portfolio value fluctuates within the 100 day collar strike range (i.e. both the short-term put option and short-term call option expire out-of-the-money)

2. The above scenarios reflect the long-term movement in the equity portfolio value with funds borrowed from another source

3. The denominator used in the Return Analysis - Periodic Return A includes the purchase price of the SPV, the cost of the collar, prepaid interest, interest on the long-term bank loan, and structuring/advisory fees.

4. The denominator used in the Return Analysis - Periodic Return B includes the cost of the collar, prepaid interest, and structuring/advisory fees

C

**POINT - 120 Day Analysis (Warrant Put by Bank)**  
**120 Day Profitability Analysis: Projected P&L**

	Put Strike Call Strike Collar Cost Days	100.00% 122.00% 120.00% 120	Projected P&L (Stock Up 25%)	Projected P&L (Stock Up 5%)	Projected P&L (Stock Up 25%)
Portfolio Cost Basis		\$ 2,914,101.18			
Portfolio Trade Price		\$ 163,341.625			
Approximate Initial Loss					(9,085,141) (0.0556)
Stock sale proceeds					
Portfolio value on SPV purchase date					
Gain/(loss) on stock		41,848,922 (55,798,563)		54,538,491 (55,798,563)	69,748,204 (55,798,563)
Proceeds from 120 day collar					
Cost of 120 day collar		13,949,641 (4,184,892)			
Gain/(loss) on 120 day collar				(4,184,892)	(4,184,892)
Warrant premium					
Interest on warrant premium (7%)		27,136,383 633,182		27,136,383 633,182	27,136,383 633,182
Cost of Warrant Put					
Gain/(loss) on warrant				(27,769,565)	(27,769,565)
Investment gain/(loss)					
Structuring bank & advisory fees					
Net gain/(loss)		(4,184,892) (4,900,249) (9,085,141)		(1,394,964) (4,900,249) (6,295,213)	8,090,792 (4,900,249) 3,190,543
Return Analysis					
Periodic Return		-14.0%		-9.7%	4.9%
Annualized Return		-42.6%		-29.3%	15.0%

Assumptions: 1. The portfolio value fluctuates within the collar strike range for the first 120 days (i.e. both the short-term put option and short-term call option expire out of the money).

**POINT - 30 Day Analysis (Warrant Put by Bank)**  
**30 Day Profitability Analysis: Projected P&L**

	9	701,613,189	360,078	Worried Subsidy From Number of Firms	27,125	Invest for Borrowing Rate	7.62%
Paid Bonds		\$2,773,123	122,058		3,000	Invest for Loan Amount	3
Federal Trade Com.		\$6,513,025	7,95%	Interest on Deposit Account	7.99%		% 20.17%
Approximate Initial Loan		\$43,000,000					
No Record							

	Projected FALL Stock: Fall	Projected FALL Stock: Up 2009	Projected FALL Stock: Up 2010
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	1995-12-31	1995-12-31	1995-12-31
Stock sub proceeds	25,718,943	61,578,413	64,578,276
Exercise value on 80% purchase date	(19,778,341)	(19,778,341)	(19,778,341)
Change (loss) on stock			5,799,936
Proceeds/cost of issuing value after 20 days	4,606,400	281,168	(3,627,977)
Cost of 125 day value		(3,110,672)	(3,110,672)
Change (loss) on 125 day value	42,511		(3,492,240)
Warrant premium			
Interest on warrant premium	27,135,000	27,135,000	27,135,000
Cost of Warrant Paid	13,618	13,618	13,618
Change (loss) on warrant	(17,273,391)	(17,273,391)	(17,273,391)
Investment bank fee			
Investor financing	428,511	174,132	335,278
Investment bank fee & advisory fees	(1,000,000)	(1,000,000)	(1,000,000)
Net proceeds	(571,489)	(825,868)	(664,722)
Actual Investment Return Analysis			
Periodic Return	-13.7%	-24.8%	10.2%
Annualized Return	-105.0%	-60.7%	27.1%
Theoretical Investment Return Analysis (negative is average benefit and does not include cash flow from adjustments)	16.82%	11.03%	10.60%
Annualized Return	-2.8%	-3.3%	2.8%

POINT									
Probability Analysis - First 30 days									
50% maximum liability percent over remaining 90 day period. Adjust call into a long call spread (105 - 125).									
Portfolio Analysis - First 30 days									
Portfolio Cost Basis	1	215,146,188	Portfolio	37,133	Investor Breaching Rate	7.41%			
Portfolio Trade Price	1	52,782,525	Call Index	1,000	Investor Loss Amount	543,18,778			
Approximate Initial Loss		163,863,663	Days	7.06%					
Notional		112,000,000	Days	125					
Stock side proceeds									
Portfolio value on 30% portfolio date		55,798,543	Projected P&L		Projected P&L				
Gain/(loss) on stock		55,798,543	(Call Index at 115%)		(Call Index at 125%)				
		55,798,543	55,798,543		55,798,543				
Bond side proceeds									
Initial Cost of 150 day call		6,184,891							
Proceeds from sale of put		6,187,560							
Cost to cover 125% call									
Net gain/(loss) on call		(88,935)							
Proceeds from short 125% 90 day call									
Cost to cover 125% 90 day call									
Cost of long 100% / 125% bid call spread									
Value of 100% / 125% bid call spread		6,272,111							
Warrant premium		27,135,000							
Interest on warrant premium		156,288							
Cost of Private Put		17,255,890							
Gain/(loss) on warrant									
Block-normalized Investment gain/(loss)									
Investor Breaching									
Investor Breaching									
Net gain/(loss)									
Actual Investment Return Analysis									
Portfolio Return		-34.1%							
Attributed Return		-108.8%							
Thematic Investment Return Analysis in aggregate leverage buckets and does not include cash flow from adjustment									
Portfolio Return		-4.1%							
Attributed Return		-33.7%							

**POINT:**

**POINT**  
*Profitability Analysis - Up 10% at 30 days*  
 Convert undecoded Balth and/or tab's a week. Adjust call position into a call held spread (110422)

Portfolio Cost Basis	\$	218,140,188	Portfolio	100.00%
Portfolio Trade Price	\$	55,740,360	Call Strike	122.07%
Approximate Initial Loss	\$	162,341,828	Collar Cost	7.59%
National		343,000,000	Days	30
			Days	118

	Proposed FAL (2016 to 2017)
Block title proceeds	113,79,419
Cost of inventory purchase data	(52,74,000)
Gain (loss) on work	5,57,896
Interest Cost at 120 day other	(1,84,048)
Interest Cost at 180 day other	2,45,334
Cost of living 112.39 day add	(3,24,548)
Net option activity	9,96,117
Value at 112.76/122.39 add and spread	2,04,079
Minimum premium	27,116,299
Maximum premium	105,299
Cost of (Receipt) of	(17,732,858)
Gain (loss) on warrant	
Make-to-stock (Inventory) gain (loss)	3,74,132
Inventory financing	(3,98,793)
Inventory financing bank & advisory fee	(1,46,600)
	(14,66,000)

	1997	1998	1999
Actual Investment Return Analysis			
Periodic Return	-1.8%	-1.2%	-1.3%
Annualized Return	-2.13%	-1.23%	-1.33%
Theoretical Investment Return Analysis (capital leverage breakeven and does not include cash flow from adjustments)			
Periodic Return	0.2%	0.2%	0.2%
Annualized Return	2.3%	2.3%	2.3%

Theoretical Investment Return Analysis (negates leverage benefits and does not include cash flow from adjustments)	
Periodic Return	0.2%
Annualized Return	2.1%





**D**

## Dynamic Profitability

	A
1	<b>Cobalt Trading Partners LLC</b>
2	<i>Dynamic Profitability Model</i>
3	<i>Collar and Basket Pricing as of 11/6/01</i>
5	
6	<b>Assumptions</b>
7	
8	Portfolio Cost Basis
9	Portfolio Trade Price
10	Approximate Initial Loss
11	
12	Cobalt Initial Total Cost as a % of Initial Loss <sup>9</sup>
13	Schein Initial Total Cost as a % of Initial Loss <sup>10</sup>
14	
15	<b>Performance Scenarios</b>
16	
17	
18	<b>Investment Activity</b>
19	
20	Stock sale proceeds
21	Portfolio value on SPV purchase date
22	Gain/(loss) on stock
23	
24	Collar unwind value
25	Cost of collar <sup>1</sup>
26	Gain/(loss) on collar
27	
28	Warrant premium
29	Interest on warrant premium (LIBOR)
30	Cost of warrant put: BASKET SOLD ▼
31	Gain/(loss) on warrant
32	Investment gain/(loss)
33	1
34	Loan fee
35	Investor financing <sup>3 &amp; 4</sup>
36	Structuring fee <sup>2</sup>
37	Net gain/(loss)
38	
39	Actual Investment Return Analysis <sup>3</sup>
40	Periodic Return
41	Annualized Return
42	Net transaction debit(-) / credit(+)
44	
45	Notes and Assumptions:

## Dynamic Profitability

	B	C	D	E	F	G	H
1							
2							
3							
5							
6							
7							
8	\$		120,022,432				
9			59,964,098				
10	\$		(60,058,334)				
11							
12			7.06%				
13			7.06%	YES			
14				NO			
15							
16			10				
17			20				
18			30	60	Projected P&L <sup>7</sup> (Stock Down 40%)	65	Projected (Stock I
19			35				
20			40		35,978,459		38,976,664
21			45		(59,964,098)		(59,964,098)
22			50			(23,985,639)	
23			51				
24			53		23,985,639	Expiry	20,987,434
25			54		(2,440,539)		(2,440,539)
26						21,545,101	
27							
28					(26,739,630)		(26,739,630)
29					-		-
30					26,739,630		26,739,630
31					-		-
32					0.00%	(2,440,539)	0.00%
33							
34	BASKET SOLD				-		
35	BASKET NOT SOLD				-		
36	BASKET NOT SOLD - 1YR UNWIND				(1,801,750)		
37					(4,242,289)		
38							
39							
40					-6.61%		
41					-37.00%		
42					-7.06%		
44							
45							

## Dynamic Profitability

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11								
12								
13		1						
14								
15								
16								
17	ted P&L <sup>7</sup>		Projected P&L <sup>7</sup>			Projected P&L <sup>7</sup>		
18	Down 35%)	70	(Stock Down 30%)	75		(Stock Down 25%)	80	
19								
20			41,974,869			44,973,074		
21			(59,964,098)			(59,964,098)		
22	(20,987,434)			(17,989,230)			(14,991,025)	
23								
24	Expiry		17,989,230	Expiry		14,991,025	Expiry	
25			(2,440,539)			(2,440,539)		
26	18,546,896			15,548,691			12,550,486	
27								
28			(26,739,630)			(26,739,630)		
29			-			-		
30			26,739,630			26,739,630		
31			-			-		
32	(2,440,539)		0.00%	(2,440,539)		0.00%	(2,440,539)	
33								
34	-		-			-		
35	-		-			-		
36	(1,801,750)		(1,801,750)			(1,801,750)		
37	(4,242,289)		(4,242,289)			(4,242,289)		
38								
39								
40	-6.61%		-6.61%			-6.61%		
41	-37.00%		-37.00%			-37.00%		
42	-7.06%		-7.06%			-7.06%		
44								
45								

## Dynamic Profitability

	T	V	W	X	Y	Z	AA
1							
2							
3							
5							
6							
7		Term (days)	54				
8		Put Strike	100.00%				
9		Call Strike	110				
10		Collar Cost <sup>1</sup>	-4.07%				
11		Unwind Period (days)	54				
12		Trade Expiry	31-Dec-01				
13		Knock-Out Values Used?	NO				
14			1				
15							
16							
17		Projected P&L <sup>7</sup>		Projected P&L <sup>7</sup>			
18		(Stock Down 20%)	85	(Stock Down 15%)	90		
19							
20		47,971,279		50,969,484			
21		(59,964,098)		(59,964,098)			
22		(11,992,820)		(8,994,615)			
23							
24		11,992,820	Expiry	8,994,615	Expiry		
25		(2,440,539)		(2,440,539)			
26		9,552,281		6,554,076			
27							
28		(26,739,630)		(26,739,630)			
29		-		-			
30		26,739,630		26,739,630			
31		-		-			
32		0.00%	(2,440,539)	0.00%	(2,440,539)		
33							
34		-		-			
35		-		-			
36		(1,801,750)		(1,801,750)			
37		(4,242,289)		(4,242,289)			
38							
39							
40		-6.61%		-6.61%			
41		-37.00%		-37.00%			
42		-7.06%		-7.06%			
44							
45		(1,201,167)					

## Dynamic Profitability

	AB	AD	AE	AF	AH	AI	AJ
1							
2							
3							
5							
6							
7	Warrant Subscription Price	26,739,630					108
8	Number of Warrants	1,000					109
9	Interest on Deposit Account	2.53%					110
10	Investor Borrowing Rate	3.53%					111
11	Investor Loan Amount \$	-					112
12	Financing Term (days) <sup>3</sup>	0					
13	Interest Allocation % <sup>4</sup>	0.00%					
14							
15							
16							
17	Projected P&L <sup>7</sup>			Projected P&L <sup>7</sup>			Projec
18	(Stock Down 10%)		95	(Stock Down 5%)		100	(Sto
19							
20	53,967,689			56,965,893			59,964,098
21	(59,964,098)			(59,964,098)			(59,964,098)
22		(5,996,410)			(2,998,205)		
23							
24	5,996,410	Expiry		2,998,205	Expiry		-
25	(2,440,539)			(2,440,539)			(2,440,539)
26		3,555,871			557,666		
27							
28	(26,739,630)			(26,739,630)			(26,739,630)
29							
30	26,739,630			26,739,630			26,739,630
31							
32	0.00%	(2,440,539)		0.00%	(2,440,539)		0.00%
33							
34							
35							
36		(1,801,750)			(1,801,750)		
37		(4,242,289)			(4,242,289)		
38							
39							
40		-6.61%			-6.61%		
41		-37.00%			-37.00%		
42		-7.06%			-7.06%		
44							
45							

## Dynamic Profitability

	AL	AM	AN	AP	AQ	AR	AT	AU
1								
2								
3								
5								
6								
7								
8								
9								
10								
11		74						
12		54						
13								
14								
15								
16								
17	ted P&L <sup>7</sup>			Projected P&L <sup>8</sup>			Projected P&L <sup>8</sup>	
18	ck Flat)	105		(Stock Up 5%)	110		(Stock Up 10%)	115
19								
20			62,962,303			65,960,508		
21			(59,964,098)			(59,964,098)		
22				2,998,205			5,996,410	
23								
24	Expiry		-	Expiry		-	Expiry	
25			(2,440,539)			(2,440,539)		
26	(2,440,539)			(2,440,539)			(2,440,539)	
27								
28			(26,739,630)			(26,739,630)		
29			-			-		
30			26,739,630			26,739,630		
31								
32	(2,440,539)		122.85%	557,666		245.70%	3,555,871	
33								
34	-			-		-		
35	-			-		-		
36	(1,801,750)			(1,801,750)		(1,801,750)		
37	(4,242,289)			(1,244,084)		1,754,121		
38								
39								
40	-6.61%			-1.94%		2.73%		
41	-37.00%			-12.39%		19.98%		
42	-7.06%			-2.07%		2.92%		
44								
45								

## Dynamic Profitability

	AV	AX	AY	AZ	BB
1					
2					
3					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17	Projected P&L <sup>s</sup>			Projected P&L <sup>s</sup>	
18	(Stock Up 15%)		120	(Stock Up 20%)	
19					
20	68,958,713			71,956,918	
21	(59,964,098)			(59,964,098)	
22		8,994,615			11,992,820
23					
24	(2,998,205)	Expiry		(5,996,410)	Expiry
25	(2,440,539)			(2,440,539)	
26		(5,438,744)			(8,436,949)
27					
28	(26,739,630)			(26,739,630)	
29	-			-	
30	26,739,630			26,739,630	
31		-			-
32	245.70%	3,555,871		245.70%	3,555,871
33					
34		-			-
35		-			-
36		(1,801,750)			(1,801,750)
37		1,754,121			1,754,121
38					
39					
40		2.73%			2.73%
41		19.98%			19.98%
42		2.92%			2.92%
44					
45					



## Dynamic Profitability

A	
46	1. The collar cost is based on actual pricing provided by HSBC Bank USA ("HSBC").
47	2. Assumes structuring fee equal to 3% of initial loss.
48	3. Investment return calculations are based on the net gain/loss over total initial costs (including basket purchase price). Annualized returns are periodically compounded. Maximum net periodic and annual (loss) is 100%.
49	7. Put offers full downside protection on stock at expiration. Pre-unwind pricing is subject to basket market value and HSBC volatility locks.
50	8. Call limits upside on stock to call strike at expiration. Pre-unwind pricing is subject to basket market value and HSBC volatility locks.
51	9. Includes structuring fee and cost of collar as a percentage of the initial loss amount.
52	10. Includes structuring fee, cost of collar, investor financing, Quellos management fee and Personal Advisor to Mr. Schein fee, as a percentage of initial loss amount.
54	
55	Confidential
58	
59	
63	
64	PERFORMANCE FEE
65	
66	I. No Interim Liquidations
67	Final Liquidation Value
68	Initial Floor Value
69	Difference
70	Performance Fee %
71	Performance Fee \$
73	
74	Final Liquidation Value
75	Initial Floor Value
76	Difference
77	Performance Fee %
78	Performance Fee \$
81	
82	II. Interim Liquidations
83	
84	t=30 (Interim)
85	Final Liquidation Value
86	Initial Floor Value
87	Difference
88	Performance Fee %
89	Performance Fee \$
91	
92	t=60 (Final)
93	Final Liquidation Value
94	Adjusted Floor Value
95	Difference
96	Performance Fee %
97	Performance Fee \$
98	

## Dynamic Profitability

	B	C	D	E	F	G	H
46							
47							
48							
49							
50							
51							
52							
54							
55							
58							
59							
63							
64							
65							
66							
67					\$ 57,523,560		
68					57,523,560		
69					-		
70					24.00%		
71					\$ -		
73							
74					\$ 59,964,098		
75					59,964,098		
76					-		
77					24.00%		
78					\$ -		
81							
82							
83							
84							
85					\$ 766,230,596		
86					772,155,559		
87					(5,924,963)		
88					24.00%		
89					\$ (1,421,991)		
91							
92							
93					\$ 59,964,098		
94					772,155,559		
95					(712,191,461)		
96					24.00%		
97					\$ (170,925,951)		
98							

## Dynamic Profitability

	J	K	L	N	O	P	R	S
46								
47								
48								
49								
50								
51								
52								
54								
55								
58								
59						59,964,098		
63								
64								
65								
66								
67	\$	57,523,560		\$	57,523,560		\$	57,523,560
68		57,523,560			57,523,560			57,523,560
69		-			-			-
70		24.00%			24.00%			24.00%
71	\$	-		\$	-		\$	-
73								
74	\$	59,964,098		\$	59,964,098		\$	59,964,098
75		59,964,098			59,964,098			59,964,098
76		-			-			-
77		24.00%			24.00%			24.00%
78	\$	-		\$	-		\$	-
81								
82								
83								
84								
85	\$	766,792,673		\$	767,868,697		\$	769,648,257
86		772,155,559			772,155,559			772,155,559
87		(5,362,886)			(4,286,862)			(2,507,303)
88		24.00%			24.00%			24.00%
89	\$	(1,287,093)		\$	(1,028,847)		\$	(601,753)
91								
92								
93	\$	59,964,098		\$	59,964,098		\$	59,964,098
94		772,155,559			772,155,559			772,155,559
95		(712,191,461)			(712,191,461)			(712,191,461)
96		24.00%			24.00%			24.00%
97	\$	(170,925,951)		\$	(170,925,951)		\$	(170,925,951)
98								

## Dynamic Profitability

	T	V	W	X	Y	Z	AA
46							
47							
48							
49							
50							
51							
52							
54							
55							
58							
59							
63							
64							
65							
66							
67		\$	57,523,560			\$	57,523,560
68			57,523,560				57,523,560
69			-				-
70			24.00%				24.00%
71		\$	-			\$	-
73							
74		\$	59,964,098			\$	59,964,098
75			59,964,098				59,964,098
76			-				-
77			24.00%				24.00%
78		\$	-			\$	-
81							
82							
83							
84							
85		\$	772,256,454			\$	775,712,761
86			772,155,559				772,155,559
87			100,895				3,557,202
88			24.00%				24.00%
89		\$	24,215			\$	853,728
91							
92							
93		\$	59,964,098			\$	59,964,098
94			772,256,454				775,712,761
95			(712,292,355)				(715,748,663)
96			24.00%				24.00%
97		\$	(170,950,165)			\$	(171,779,679)
98							

## Dynamic Profitability

	AB	AD	AE	AF	AH	AI	AJ
46							
47							
48							
49							
50							
51							
52							
54							
55							
58							
59							
63							
64							
65							
66							
67		\$ 57,523,560			\$ 57,523,560		
68		57,523,560			57,523,560		
69		-			-		
70		24.00%			24.00%		
71		\$ -			\$ -		
73							
74		\$ 59,964,098			\$ 59,964,098		
75		59,964,098			59,964,098		
76		-			-		
77		24.00%			24.00%		
78		\$ -			\$ -		
81							
82							
83							
84							
85		\$ 779,920,773			\$ 784,689,403		
86		772,155,559			772,155,559		
87		7,765,214			12,533,844		
88		24.00%			24.00%		
89		\$ 1,863,651			\$ 3,008,123		
91							
92							
93		\$ 59,964,098			\$ 59,964,098		
94		779,920,773			784,689,403		
95		(719,956,674)			(724,725,304)		
96		24.00%			24.00%		
97		\$ (172,789,602)			\$ (173,934,073)		
98							

## Dynamic Profitability

	AL	AM	AN	AP	AQ	AR	AT	AU
46								
47								
48								
49								
50								
51								
52								
54								
55								
58								
59								
63								
64								
65								
66								
67	\$ 57,523,560			\$ 60,521,764			\$ 63,519,969	
68	57,523,560			57,523,560			57,523,560	
69	-			2,998,205			5,996,410	
70	24.00%			24.00%			24.00%	
71	\$ -			\$ 719,569			\$ 1,439,138	
73								
74	\$ 59,964,098			\$ 62,962,303			\$ 65,960,508	
75	59,964,098			59,964,098			59,964,098	
76	-			2,998,205			5,996,410	
77	24.00%			24.00%			24.00%	
78	\$ -			\$ 719,569			\$ 1,439,138	
81								
82								
83								
84								
85	\$ 789,773,779			\$ 794,917,082			\$ 799,891,153	
86	772,155,559			772,155,559			772,155,559	
87	17,618,220			22,761,523			27,735,594	
88	24.00%			24.00%			24.00%	
89	\$ 4,228,373			\$ 5,462,765			\$ 6,656,542	
91								
92								
93	\$ 59,964,098			\$ 62,962,303			\$ 65,960,508	
94	789,773,779			794,917,082			799,891,153	
95	(729,809,681)			(731,954,778)			(733,930,644)	
96	24.00%			24.00%			24.00%	
97	\$ (175,154,323)			\$ (175,669,147)			\$ (176,143,355)	
98								

## Dynamic Profitability

	AV	AX	AY	AZ	BB
46					
47					
48					
49					
50					
51					
52					
54					
55					Quellos Custom Strategies, LLC
58					
59					
63					
64					
65					
66					
67		\$ 63,519,969			\$ 63,519,969
68		57,523,560			57,523,560
69		5,996,410			5,996,410
70		24.00%			24.00%
71		<u>\$ 1,439,138</u>			<u>\$ 1,439,138</u>
73					
74		\$ 65,960,508			\$ 65,960,508
75		59,964,098			59,964,098
76		5,996,410			5,996,410
77		24.00%			24.00%
78		<u>\$ 1,439,138</u>			<u>\$ 1,439,138</u>
81					
82					
83					
84					
85		\$ 804,516,586			\$ 808,674,298
86		772,155,559			772,155,559
87		32,361,027			36,518,739
88		24.00%			24.00%
89		<u>\$ 7,766,647</u>			<u>\$ 8,764,497</u>
91					
92					
93		\$ 65,960,508			\$ 65,960,508
94		804,516,586			808,674,298
95		(738,556,078)			(742,713,790)
96		24.00%			24.00%
97		<u>\$ (177,253,459)</u>			<u>\$ (178,251,310)</u>
98					

## 10% Loss Hurdle

	B
1	<b>Cobalt Trading Partners LLC</b>
2	<i>Stock Move and Collar Unwind Scenarios Exceeding 10% Net Cost Hurdle</i>
3	
4	
5	
6	
7	
8	Days into Trade:
9	
10	
11	
12	
13	
14	
15	
16	
17	Expiry
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
29	
30	Expiry
34	
35	<b>Confidential</b>



1443

10% Loss Hurdle

	C	D	E	F	G	H	I	J
1								
2								
3								
4								
5								
6		Call Strike:	110					
7		Stock Move:	-40			-35		
8		10	-7.29%			-7.26%		
9		20	-7.24%			-7.22%		
10		30	-7.18%			-7.17%		
11		35	-7.15%			-7.14%		
12		40	-7.11%			-7.11%		
13		45	-7.08%			-7.08%		
14		50	-7.05%			-7.05%		
15		51	-7.04%			-7.04%		
16		53	-7.03%			-7.03%		
17		54	-7.02%			-7.02%		
18								
19		Unwind vs Initial Cost Differentials						
20		Stock Move:	-40			-35		
21		10	-0.23%	7.06%	7.06%	7.06%	-0.20%	7.06%
22		20	-0.17%	7.06%	7.06%	7.06%	-0.16%	7.06%
23		30	-0.11%	7.06%	7.06%	7.06%	-0.11%	7.06%
24		35	-0.08%	7.06%	7.06%	7.06%	-0.08%	7.06%
25		40	-0.05%	7.06%	7.06%	7.06%	-0.05%	7.06%
26		45	-0.02%	7.06%	7.06%	7.06%	-0.02%	7.06%
27		50	0.01%	7.06%	7.06%	7.06%	0.01%	7.06%
28		51	0.02%	7.06%	7.06%	7.06%	0.02%	7.06%
29		53	0.04%	7.06%	7.06%	7.06%	0.04%	7.06%
30		54	0.04%	7.06%	7.06%	7.06%	0.04%	7.06%
34								
35								

### 10% Loss Hurdle

	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y
1															
2	2														
3															
4															
5															
6															
7	-30					-25				-20				-15	
8	-7.17%					-6.98%				-6.62%				-6.07%	
9	-7.18%					-7.05%				-6.77%				-6.28%	
10	-7.16%					-7.10%				-6.93%				-6.55%	
11	-7.14%					-7.11%				-7.00%				-6.70%	
12	-7.11%					-7.10%				-7.05%				-6.86%	
13	-7.08%					-7.08%				-7.07%				-6.99%	
14	-7.05%					-7.05%				-7.05%				-7.04%	
15	-7.04%					-7.04%				-7.04%				-7.04%	
16	-7.03%					-7.03%				-7.03%				-7.03%	
17	-7.02%					-7.02%				-7.02%				-7.02%	
18															
19															
20	-30					-25				-20				-15	
21	7.06%	-0.11%	7.06%	7.06%	7.06%	0.09%	7.06%	7.06%	7.06%	0.44%	7.06%	7.06%	7.06%	0.99%	7.06%
22	7.06%	-0.11%	7.06%	7.06%	7.06%	0.01%	7.06%	7.06%	7.06%	0.29%	7.06%	7.06%	7.06%	0.78%	7.06%
23	7.06%	-0.10%	7.06%	7.06%	7.06%	-0.04%	7.06%	7.06%	7.06%	0.13%	7.06%	7.06%	7.06%	0.51%	7.06%
24	7.06%	-0.08%	7.06%	7.06%	7.06%	-0.05%	7.06%	7.06%	7.06%	0.06%	7.06%	7.06%	7.06%	0.36%	7.06%
25	7.06%	-0.05%	7.06%	7.06%	7.06%	-0.04%	7.06%	7.06%	7.06%	0.01%	7.06%	7.06%	7.06%	0.21%	7.06%
26	7.06%	-0.02%	7.06%	7.06%	7.06%	-0.02%	7.06%	7.06%	7.06%	-0.01%	7.06%	7.06%	7.06%	0.08%	7.06%
27	7.06%	0.01%	7.06%	7.06%	7.06%	0.01%	7.06%	7.06%	7.06%	0.01%	7.06%	7.06%	7.06%	0.02%	7.06%
28	7.06%	0.02%	7.06%	7.06%	7.06%	0.02%	7.06%	7.06%	7.06%	0.02%	7.06%	7.06%	7.06%	0.02%	7.06%
29	7.06%	0.04%	7.06%	7.06%	7.06%	0.04%	7.06%	7.06%	7.06%	0.04%	7.06%	7.06%	7.06%	0.04%	7.06%
30	7.06%	0.04%	7.06%	7.06%	7.06%	0.04%	7.06%	7.06%	7.06%	0.04%	7.06%	7.06%	7.06%	0.04%	7.06%
34															
35															

1445

### 10% Loss Hurdle

[illegible]

### 10% Loss Hurdle

	AP	AQ	AR	AS	AT	AU	AV	AW	AX	AY	AZ	BA	BB	BC	BD
1															
2															
3															
4															
5															
6	111				112				120				Dollar Cost		
7	Flat	-25	-10	Flat	-25	-10	Flat	-25	-10	Flat	-40				
8	9.96										10	\$4,379,887	\$0	\$0	\$0
9											20	\$4,345,885	\$0	\$0	\$0
10											30	\$4,309,705	\$0	\$0	\$0
11											35	\$4,291,177	\$0	\$0	\$0
12											40	\$4,272,561	\$0	\$0	\$0
13											45	\$4,253,912	\$0	\$0	\$0
14											50	\$4,235,258	\$0	\$0	\$0
15											51	\$4,227,768	\$0	\$0	\$0
16											53	\$4,220,244	\$0	\$0	\$0
17											54	\$4,216,481	\$0	\$0	\$0
18															
19															
20	Flat	-25	-10	Flat	-25	-10	Flat	-25	-10	Flat	-40				
21	9.96										10	(\$137,598)	\$4,242,289	\$4,242,289	\$4,242,289
22											20	(\$103,596)	\$4,242,289	\$4,242,289	\$4,242,289
23											30	(\$67,416)	\$4,242,289	\$4,242,289	\$4,242,289
24											35	(\$48,888)	\$4,242,289	\$4,242,289	\$4,242,289
25											40	(\$30,272)	\$4,242,289	\$4,242,289	\$4,242,289
26											45	(\$11,623)	\$4,242,289	\$4,242,289	\$4,242,289
27											50	\$7,031	\$4,242,289	\$4,242,289	\$4,242,289
28											51	\$14,521	\$4,242,289	\$4,242,289	\$4,242,289
29											53	\$22,044	\$4,242,289	\$4,242,289	\$4,242,289
30											54	\$25,808	\$4,242,289	\$4,242,289	\$4,242,289
34															
35															



### 10% Loss Hurdle

[illegible]



1450

10% Loss Hurdle

	CF	CG
1		
2		
3		
4		
5		
6		
7		Flat
8	\$0	\$2,025,092
9	\$0	\$2,063,732
10	\$0	\$2,144,051
11	\$0	\$2,212,868
12	\$0	\$2,317,772
13	\$0	\$2,492,274
14	\$0	\$2,838,859
15	\$0	\$3,101,577
16	\$0	\$3,559,948
17	\$0	\$4,216,481
18		
19		
20		Flat
21	\$4,242,289	\$2,217,196
22	\$4,242,289	\$2,178,557
23	\$4,242,289	\$2,098,237
24	\$4,242,289	\$2,029,421
25	\$4,242,289	\$1,924,517
26	\$4,242,289	\$1,750,015
27	\$4,242,289	\$1,403,430
28	\$4,242,289	\$1,140,712
29	\$4,242,289	\$682,341
30	\$4,242,289	\$25,808
34		
35	Quellos Custom Strategies, LLC	



## Profit Matrix

	A
1	<b>Cobalt Trading Partners LLC</b>
2	<i>Projected Net Investment Gain/(Loss) Scenarios</i>
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
22	
23	Notes:
24	1.
25	2.
26	3.
27	4.
28	
29	
30	
31	
32	
33	
34	
35	
36	
48	
49	2.

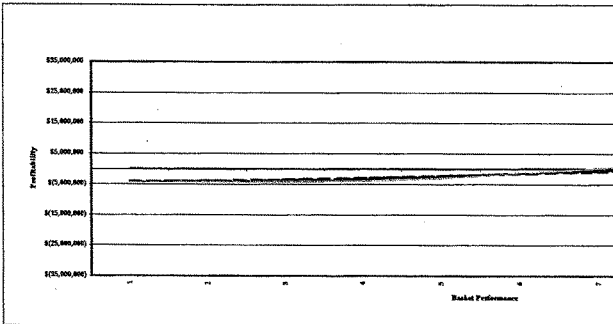
## Profit Matrix

	B
1	
2	
4	
5	11/7/2001
6	
7	
8	-20.00%
9	-15.00%
10	-10.00%
11	-5.00%
12	0.00%
13	5.00%
14	10.00%
15	15.00%
16	20.00%
17	25.00%
22	
23	
24	The matrix details the <i>estimated</i> total net gain/(loss).
25	The total structuring fees are \$1,801,750
26	The matrix is based on an original basket price of \$59,964,098 and an original collar price of \$2,440,539.
27	Collar unwind valuations are based on forward interest rates as of November 6, 2001. Actual interest rates upon unwind may differ causing the actual net investment gain/(loss) to vary.
28	
29	
30	
31	
32	
33	
34	
35	
36	
48	
49	The total fees are approximately \$1,500,000 million

	C	D	E	F	G	H	I	J
1								
2								
4								
5								
6					<b>Days Into Trade</b>			
7	10	20	30	35	40	45	50	51
7	11/17/01	11/27/01	12/07/01	12/12/01	12/17/01	12/22/01	12/27/01	12/28/01
8	(4,073,545)	(4,147,237)	(4,220,929)	(4,250,793)	(4,268,993)	(4,269,830)	(4,255,841)	(4,252,458)
9	(3,783,793)	(3,893,387)	(4,031,543)	(4,108,845)	(4,184,210)	(4,241,459)	(4,255,029)	(4,252,344)
10	(3,367,709)	(3,486,272)	(3,661,679)	(3,780,059)	(3,924,040)	(4,089,576)	(4,230,409)	(4,243,223)
11	(2,837,917)	(2,926,801)	(3,079,291)	(3,197,609)	(3,364,461)	(3,611,397)	(3,987,949)	(4,078,199)
12	(2,229,191)	(2,253,037)	(2,316,556)	(2,377,326)	(2,476,374)	(2,653,026)	(3,038,551)	(3,177,518)
13	(1,588,830)	(1,528,658)	(1,464,021)	(1,429,074)	(1,391,285)	(1,348,704)	(1,295,608)	(1,282,263)
14	(964,583)	(822,560)	(633,109)	(504,974)	(334,019)	(78,217)	401,162	562,709
15	(394,929)	(190,383)	85,893	271,382	512,015	846,244	1,347,853	1,473,938
16	95,865	335,210	646,754	844,378	1,081,939	1,366,726	1,664,330	1,708,478
17	498,003	744,790	1,046,289	1,221,915	1,411,976	1,600,197	1,729,766	1,740,451
22								
23								
24								
25								
26								
27								
28								
29								
30								
31								
32								
33								
34								
35								
36								
48								
49								

## Profit Matrix

	K	L	Q	R	S	T	U
1							
2							
4							
5							
6	53	54					
7	12/30/01	12/31/01					
8	(4,245,679)	(4,242,289)					
9	(4,245,679)	(4,242,289)					
10	(4,245,668)	(4,242,289)					
11	(4,230,694)	(4,242,289)					
12	(3,614,879)	(4,242,289)					
13	(1,251,153)	(1,244,084)					
14	1,056,786	1,754,121					
15	1,716,486	1,754,121					
16	1,750,155	1,754,121					
17	1,750,392	1,754,121					
22							
23							
24							
25							
26							
27							
28							
29							
30							
31							
32							
33							
34							
35							
36							
48							
49							



1455

Profit Matrix

	V	W	X
1			
2			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			
33			
34			
35			
36			
48			
49			

1456

Unwinds

	B
1	<b>Cobalt Trading Partners LLC</b>
2	<i>Collar Unwinds</i>
3	
4	
5	
6	
7	
8	
9	<u>Price (%)</u>
10	60
11	65
12	70
13	75
14	80
15	85
16	90
17	95
18	100
19	105
20	110
21	115
22	120
23	125
24	
25	
26	
27	
28	<u>Price (%)</u>
29	60
30	65
31	70
32	75
33	80
34	85
35	90
36	95
37	100
38	105
39	110
40	115
41	120
42	125
43	
44	
45	<u>Price (%)</u>
46	60

1457

Unwinds

	C
1	
2	
3	
4	NOTIONAL:
5	Days:
6	Collar:
7	
8	Days
9	0
10	
11	
12	
13	
14	
15	
16	
17	
18	(\$2,440,539)
19	
20	
21	
22	
23	
24	
25	
26	
27	Days
28	0
29	
30	
31	
32	
33	
34	
35	
36	
37	-4.07%
38	
39	
40	
41	
42	
43	
44	Days
45	0
46	

## Unwinds

	D	E	F	G
1				
2				
3				
4	\$59,964,098	2		
5	54	3		
6	100 Put / 110 Call			
7				
8	NET UNWIND VALUES (Pre-Tax)			
9	10	20	30	35
10	\$57,378,124	\$57,409,172	\$57,442,302	\$57,459,186
11	\$57,390,368	\$57,413,426	\$57,442,912	\$57,459,296
12	\$57,427,736	\$57,431,339	\$57,447,476	\$57,460,643
13	\$57,517,188	\$57,486,642	\$57,469,644	\$57,470,341
14	\$57,692,304	\$57,618,611	\$57,544,920	\$57,515,055
15	\$57,982,055	\$57,872,462	\$57,734,305	\$57,657,004
16	\$58,398,140	\$58,279,576	\$58,104,169	\$57,985,789
17	\$58,927,932	\$58,839,047	\$58,686,557	\$58,568,239
18	\$59,536,657	\$59,512,812	\$59,449,292	\$59,388,522
19	\$60,177,018	\$60,237,190	\$60,301,828	\$60,336,775
20	\$60,801,265	\$60,943,288	\$61,132,739	\$61,260,874
21	\$61,370,919	\$61,575,466	\$61,851,741	\$62,037,230
22	\$61,861,714	\$62,101,058	\$62,412,603	\$62,610,227
23	\$62,263,852	\$62,510,638	\$62,812,137	\$62,987,763
24	10	20	30	40
25	10	20	30	35
26				
27	NET UNWIND PERCENTAGE P/L: <u>Period</u>			
28	10	20	30	35
29	-4.31%	-4.26%	-4.21%	-4.18%
30	-4.29%	-4.25%	-4.20%	-4.18%
31	-4.23%	-4.22%	-4.20%	-4.17%
32	-4.08%	-4.13%	-4.16%	-4.16%
33	-3.79%	-3.91%	-4.03%	-4.08%
34	-3.31%	-3.49%	-3.72%	-3.85%
35	-2.61%	-2.81%	-3.10%	-3.30%
36	-1.73%	-1.88%	-2.13%	-2.33%
37	-0.71%	-0.75%	-0.86%	-0.96%
38	0.36%	0.46%	0.56%	0.62%
39	1.40%	1.63%	1.95%	2.16%
40	2.35%	2.69%	3.15%	3.46%
41	3.16%	3.56%	4.08%	4.41%
42	3.84%	4.25%	4.75%	5.04%
43				
44	NET UNWIND PERCENTAGE P/L: <u>Annual</u>			
45	10	20	30	35
46	-79.99%	-54.83%	-40.71%	-35.92%



## Unwinds

	H	I	J	K	L
1					
2					
3					
4		<u>Collar Unwind Volatilities</u>		<u>Hand</u>	
5	Put	50.250%			
6	Call	50.500%			
7					
8		<b>"Knock-Out" Region - K-O Values Used?</b>			<b>No</b>
9	40	45	50	51	53
10	\$57,476,116	\$57,493,056	\$57,510,001	\$57,513,390	\$57,520,170
11	\$57,476,122	\$57,493,056	\$57,510,001	\$57,513,390	\$57,520,170
12	\$57,476,294	\$57,493,059	\$57,510,001	\$57,513,390	\$57,520,170
13	\$57,478,670	\$57,493,192	\$57,510,001	\$57,513,390	\$57,520,170
14	\$57,496,855	\$57,496,019	\$57,510,007	\$57,513,390	\$57,520,170
15	\$57,581,638	\$57,524,389	\$57,510,820	\$57,513,504	\$57,520,170
16	\$57,841,808	\$57,676,272	\$57,535,439	\$57,522,625	\$57,520,180
17	\$58,401,387	\$58,154,451	\$57,777,900	\$57,687,649	\$57,535,155
18	\$59,289,474	\$59,112,822	\$58,727,297	\$58,588,330	\$58,150,969
19	\$60,374,563	\$60,417,144	\$60,470,240	\$60,483,585	\$60,514,695
20	\$61,431,830	\$61,687,631	\$62,167,011	\$62,328,558	\$62,822,634
21	\$62,277,864	\$62,612,092	\$63,113,702	\$63,239,786	\$63,482,334
22	\$62,847,787	\$63,132,575	\$63,430,178	\$63,474,326	\$63,516,003
23	\$63,177,825	\$63,366,045	\$63,495,615	\$63,506,300	\$63,516,240
24	50	60	70	71	73
25	40	45	50	51	53
26					
27					
28	40	45	50	51	53
29	-4.15%	-4.12%	-4.09%	-4.09%	-4.08%
30	-4.15%	-4.12%	-4.09%	-4.09%	-4.08%
31	-4.15%	-4.12%	-4.09%	-4.09%	-4.08%
32	-4.14%	-4.12%	-4.09%	-4.09%	-4.08%
33	-4.11%	-4.12%	-4.09%	-4.09%	-4.08%
34	-3.97%	-4.07%	-4.09%	-4.09%	-4.08%
35	-3.54%	-3.82%	-4.05%	-4.07%	-4.08%
36	-2.61%	-3.02%	-3.65%	-3.80%	-4.05%
37	-1.13%	-1.42%	-2.06%	-2.29%	-3.02%
38	0.68%	0.76%	0.84%	0.87%	0.92%
39	2.45%	2.87%	3.67%	3.94%	4.77%
40	3.86%	4.42%	5.25%	5.46%	5.87%
41	4.81%	5.28%	5.78%	5.85%	5.92%
42	5.36%	5.67%	5.89%	5.91%	5.92%
43					
44					
45	40	45	50	51	53
46	-29.09%	-28.92%	-26.28%	-25.82%	-24.92%

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Unwinds

	M	N	O	P	Q
1					
2				2.0636%	2.0636%
3		150	108	2.0636%	2.0636%
4		180	109		
5			110 FX THIS!		
6			112 11/7/2001	17-Nov-01	27-Nov-01
7	Expiry		115 T:	0.1205	0.0932
8	31-Dec-01		120 r:	2.0636%	2.0636%
9	54			10	20
10	\$57,523,560			39.76	39.81
11	\$57,523,560			34.78	34.82
12	\$57,523,560			29.87	29.85
13	\$57,523,560		PUTS	25.07	24.97
14	\$57,523,560			20.51	20.26
15	\$57,523,560			16.31	15.88
16	\$57,523,560			12.58	11.97
17	\$57,523,560			9.41	8.66
18	\$57,523,560			6.82	6.01
19	\$60,521,764			4.80	4.00
20	\$63,519,969			3.28	2.56
21	\$63,519,969			2.18	1.58
22	\$63,519,969			1.42	0.94
23	\$63,519,969			0.90	0.54
24	74				
25	54				
26					
27	Expiry		Put vol:	50.250%	
28	54				
29	-4.07%		Put d1	-2.826410901	-3.241545211
30	-4.07%			-2.367629504	-2.719638744
31	-4.07%			-1.942864276	-2.236428828
32	-4.07%			-1.547417309	-1.786571159
33	-4.07%			-1.177501376	-1.365757414
34	-4.07%			-0.83001877	-0.970463662
35	-4.07%			-0.502403454	-0.597770799
36	-4.07%			-0.19250595	-0.245233593
37	-4.07%			0.101492216	0.089216638
38	0.93%			0.381143171	0.407345584
39	5.93%			0.647782299	0.710672368
40	5.93%			0.902566804	1.000513417
41	5.93%			1.14650607	1.278016998
42	5.93%			1.380485807	1.54419069
43					
44	Expiry		Put d2	-3.000878977	-3.394911212
45	54			-2.54209758	-2.873004744
46	-24.49%				

## Unwinds

	R	S	T	U	V	W	X
1							
2	2.0636%	2.0636%	2.0636%	2.0636%	2.0636%	2.0636%	2.0636%
3	2.0636%	2.0636%	2.0636%	2.0636%	2.0636%	2.0636%	2.0636%
4							
5							
6	7-Dec-01	12-Dec-01	17-Dec-01	22-Dec-01	27-Dec-01	28-Dec-01	30-Dec-01
7	0.0658	0.0521	0.0384	0.0247	0.0110	0.0082	0.0027
8	2.0636%	2.0636%	2.0636%	2.0636%	2.0636%	2.0636%	2.0636%
9	30	35	40	45	50	51	53
10	39.86	39.89	39.92	39.95	39.98	39.98	39.99
11	34.87	34.89	34.92	34.95	34.98	34.98	34.99
12	29.87	29.90	29.92	29.95	29.98	29.98	29.99
13	24.92	24.91	24.93	24.95	24.98	24.98	24.99
14	20.06	20.00	19.96	19.95	19.98	19.98	19.99
15	15.46	15.27	15.11	15.00	14.98	14.98	14.99
16	11.31	10.96	10.61	10.27	10.02	10.00	9.99
17	7.81	7.32	6.78	6.16	5.43	5.27	5.02
18	5.07	4.52	3.88	3.12	2.09	1.81	1.05
19	3.09	2.56	1.98	1.31	0.51	0.34	0.03
20	1.77	1.34	0.90	0.45	0.08	0.03	0.00
21	0.96	0.65	0.36	0.13	0.01	0.00	0.00
22	0.49	0.29	0.13	0.03	0.00	0.00	0.00
23	0.24	0.12	0.04	0.01	0.00	0.00	0.00
24							
25							
26							
27							
28							
29	-3.889442591	-4.388907003	-5.133368118	-6.427935791	-9.680155004	-11.18651396	-19.40621159
30	-3.268249643	-3.690746402	-4.320035631	-5.413531955	-8.15854925	-9.429514975	-16.36300008
31	-2.693114806	-3.044350648	-3.567007365	-4.474340698	-6.749762365	-7.802788	-13.54542631
32	-2.157677082	-2.442570597	-2.865954822	-3.599974556	-5.438213152	-6.288341417	-10.92232788
33	-1.656808541	-1.879642955	-2.210163965	-2.782059654	-4.211340798	-4.871671251	-8.468583178
34	-1.186314868	-1.350853716	-1.594143144	-2.013746703	-3.058871372	-3.540914183	-6.163644325
35	-0.742721633	-0.852297961	-1.013343266	-1.289361984	-1.972294294	-2.286243047	-3.99049017
36	-0.32311843	-0.380704672	-0.463953711	-0.604152822	-0.944480551	-1.099425964	-1.934862683
37	0.074956969	0.066693452	0.057249331	0.045901582	0.030601054	0.02650129	0.015300527
38	0.453606152	0.492258395	0.553017486	0.664233109	0.958098346	1.097482912	1.87029511
39	0.814637238	0.898022306	1.025718137	1.253794403	1.842440287	2.118633027	3.638978992
40	1.15961709	1.285746187	1.47740279	1.817144142	2.687464895	3.094383398	5.329028209
41	1.489912417	1.656966088	1.909860887	2.356514153	3.496519912	4.028599661	6.947138242
42	1.806722478	2.013029858	2.324662626	2.873862817	4.272542907	4.924673832	8.499184233
43							
44							
45	-4.018295805	-4.503554991	-5.231781385	-6.506841947	-9.732759108	-11.23207045	-19.43251364
46	-3.397102857	-3.805394389	-4.418448898	-5.492438111	-8.211153354	-9.475071466	-16.38930213

1462

Unwinds

	Y	Z	AA	AB	AC	AD
1						
2						
3						
4						
5						
6	31-Dec-01					
7	0.0000					
8						
9	54		CALLS			
10	40	60	10	20	30	35
11	35	65	0.00	0.00	0.00	0.00
12	30	70	0.01	0.01	0.00	0.00
13	25	75	0.08	0.03	0.01	0.00
14	20	80	0.23	0.11	0.03	0.01
15	15	85	0.55	0.30	0.11	0.05
16	10	90	1.12	0.71	0.34	0.19
17	5	95	2.07	1.47	0.87	0.58
18	0	100	3.46	2.69	1.85	1.41
19	0	105	5.37	4.48	3.45	2.87
20	0	110	7.81	6.86	5.75	5.11
21	0	115	10.77	9.82	8.74	8.12
22	0	120	14.18	13.30	12.33	11.81
23	0	125	17.99	17.22	16.42	16.01
24						
25						
26						
27						
28						
29						
30						
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						
41						
42						
43						
44						
45						
46						

Call d1	60	-3.355138592	-3.843116048	-4.605566937	-5.19382413
	65	-2.89862839	-3.323793275	-3.987449201	-4.499119769
	70	-2.475965961	-2.842975488	-3.415161566	-3.855923993
	75	-2.082476652	-2.395344838	-2.882374524	-3.257123052
	80	-1.714391986	-1.976614329	-2.38398553	-2.69698218
	85	-1.368629591	-1.583277476	-1.915821033	-2.17081071
	90	-1.042636133	-1.212429627	-1.474423805	-1.674723053
	95	-0.734272775	-0.861637656	-1.056897845	-1.205464384
	100	-0.441730046	-0.528843118	-0.660793117	-0.760281103
	105	-0.163463501	-0.212289068	-0.284018434	-0.336822916
	110	0.101855631	0.089536098	0.075225369	0.066932262
	115	0.355378827	0.377942291	0.418497399	0.452736719
	120	0.598110473	0.654072092	0.747157601	0.822118897
	125	0.830931894	0.918928092	1.062399296	1.176419975
Call d2	60	-3.530474669	-3.997245063	-4.735061211	-5.309042505
	65	-3.073964467	-3.477922291	-4.116943476	-4.614338144

## Unwinds

	AE	AF	AG	AH	AI
1					
2					
3					
4					
5					
6					
7					
8					
9	40	45	50	51	53
10	0.00	0.00	0.00	0.00	0.00
11	0.00	0.00	0.00	0.00	0.00
12	0.00	0.00	0.00	0.00	0.00
13	0.00	0.00	0.00	0.00	0.00
14	0.00	0.00	0.00	0.00	0.00
15	0.01	0.00	0.00	0.00	0.00
16	0.08	0.01	0.00	0.00	0.00
17	0.31	0.10	0.00	0.00	0.00
18	0.94	0.47	0.08	0.03	0.00
19	2.23	1.48	0.60	0.40	0.05
20	4.38	3.51	2.33	2.02	1.16
21	7.43	6.64	5.68	5.47	5.06
22	11.25	10.68	10.15	10.08	10.01
23	15.61	15.26	15.04	15.02	15.01
24					
25					
26					
27					
28					
29	-6.071141405	-7.597635884	-11.43484211	-13.21268374	-22.91575017
30	-5.261835316	-6.588253849	-9.920769059	-11.46438277	-19.88760406
31	-4.512534913	-5.653712054	-8.518956366	-9.845708897	-17.08397867
32	-3.814952928	-4.783674457	-7.213899971	-8.338759575	-14.47386588
33	-3.162408559	-3.969808639	-5.993101243	-6.929102627	-12.03226843
34	-2.549437347	-3.205299217	-4.846337111	-5.604933466	-9.738740165
35	-1.971512716	-2.484500562	-3.765139128	-4.356473573	-7.576344198
36	-1.424842911	-1.802683524	-2.742413572	-3.175531822	-5.530893085
37	-0.906220082	-1.155847212	-1.772159103	-2.055178465	-3.590384148
38	-0.412906224	-0.540576732	-0.849253383	-0.989498733	-1.744572707
39	0.057454324	0.046065942	0.030710628	0.026596184	0.015355314
40	0.506902914	0.606626821	0.871551946	0.997516107	1.697037951
41	0.93722013	1.143326684	1.67660174	1.927107537	3.307137538
42	1.349968395	1.658114215	2.448783038	2.818745697	4.851500133
43					
44					
45	-6.17004429	-7.676934609	-11.48770793	-13.25846688	-22.94218307
46	-5.360738202	-6.667552574	-9.973634876	-11.51016591	-19.91403697

Unwinds

	B
47	65
48	70
49	75
50	80
51	85
52	90
53	95
54	100
55	105
56	110
57	115
58	120
59	125
60	
61	
62	
63	
64	
65	
66	<u>Price (%)</u>
67	60
68	65
69	70
70	75
71	80
72	85
73	90
74	95
75	100
76	105
77	110
78	115
79	120
80	125
81	1
83	
160	
161	
162	
163	
164	

1465

Unwinds

	C
47	
48	
49	
50	
51	
52	
53	
54	
55	
56	
57	
58	
59	
60	
61	
62	
63	
64	
65	
66	Days 0
67	
68	
69	
70	
71	
72	
73	
74	
75	
76	
77	
78	
79	
80	
81	
83	
160	
161	
162	
163	
164	

1466

Unwinds

	D	E	F	G
47	-79.84%	-54.76%	-40.70%	-35.92%
48	-79.35%	-54.51%	-40.65%	-35.90%
49	-78.14%	-53.70%	-40.37%	-35.79%
50	-75.58%	-51.72%	-39.41%	-35.26%
51	-70.68%	-47.69%	-36.94%	-33.58%
52	-61.93%	-40.55%	-31.84%	-29.52%
53	-47.07%	-29.22%	-23.05%	-21.78%
54	-22.98%	-12.88%	-9.96%	-9.57%
55	13.81%	8.65%	7.07%	6.67%
56	65.87%	34.39%	26.47%	25.00%
57	133.13%	62.25%	45.80%	42.54%
58	211.79%	89.47%	62.73%	56.88%
59	294.99%	113.62%	75.87%	67.03%
60	0.66262437			
61				
62				
63				
64				
65	Collar Unwind P/L (gross of purchase premium)			
66	10	20	30	35
67	\$23,840,204	\$23,871,252	\$23,904,381	\$23,921,266
68	\$20,854,243	\$20,877,301	\$20,906,787	\$20,923,170
69	\$17,893,406	\$17,897,009	\$17,913,146	\$17,926,313
70	\$14,984,653	\$14,954,107	\$14,937,109	\$14,937,806
71	\$12,161,564	\$12,087,871	\$12,014,180	\$11,984,315
72	\$9,453,110	\$9,343,517	\$9,205,361	\$9,128,059
73	\$6,870,990	\$6,752,427	\$6,577,020	\$6,458,640
74	\$4,402,577	\$4,313,693	\$4,161,203	\$4,042,884
75	\$2,013,098	\$1,989,252	\$1,925,733	\$1,864,962
76	(\$344,746)	(\$284,574)	(\$219,937)	(\$184,990)
77	(\$2,718,704)	(\$2,576,681)	(\$2,387,231)	(\$2,259,095)
78	(\$5,147,255)	(\$4,942,709)	(\$4,666,433)	(\$4,480,944)
79	(\$7,654,665)	(\$7,415,321)	(\$7,103,777)	(\$6,906,152)
80	(\$10,250,732)	(\$10,003,946)	(\$9,702,447)	(\$9,526,821)
81	3	4	5	6
83				
160				
161				
162				
163				
164				



1467

Unwinds

	H	I	J	K	L
47	-29.09%	-28.92%	-26.28%	-25.82%	-24.92%
48	-29.09%	-28.92%	-26.28%	-25.82%	-24.92%
49	-29.06%	-28.92%	-26.28%	-25.82%	-24.92%
50	-28.88%	-28.89%	-26.28%	-25.82%	-24.92%
51	-30.92%	-28.60%	-26.28%	-25.82%	-24.92%
52	-28.02%	-27.06%	-26.05%	-25.73%	-24.92%
53	-21.41%	-22.01%	-23.75%	-24.19%	-24.78%
54	-9.81%	-10.95%	-14.11%	-15.31%	-19.06%
55	6.42%	6.30%	6.33%	6.37%	6.50%
56	24.69%	25.84%	30.13%	31.89%	37.81%
57	41.27%	41.98%	45.31%	46.32%	48.09%
58	53.51%	51.84%	50.71%	50.25%	48.63%
59	61.03%	56.45%	51.85%	50.80%	48.64%
60					
61					
62					
63					
64					
65	"Knock-Out" Region - K-O Values Used?				
66	40	45	50	51	No 53
67	\$23,938,196	\$23,955,136	\$23,972,080	\$23,975,470	\$23,982,249
68	\$20,939,997	\$20,956,931	\$20,973,875	\$20,977,265	\$20,984,044
69	\$17,941,964	\$17,958,729	\$17,975,670	\$17,979,060	\$17,985,839
70	\$14,946,135	\$14,960,657	\$14,977,466	\$14,980,855	\$14,987,635
71	\$11,966,116	\$11,965,279	\$11,979,267	\$11,982,650	\$11,989,430
72	\$9,052,693	\$8,995,444	\$8,981,875	\$8,984,559	\$8,991,225
73	\$6,314,659	\$6,149,123	\$6,008,289	\$5,995,476	\$5,993,030
74	\$3,876,032	\$3,629,096	\$3,252,545	\$3,162,294	\$3,009,800
75	\$1,765,915	\$1,589,262	\$1,203,738	\$1,064,771	\$627,410
76	(\$147,201)	(\$104,620)	(\$51,524)	(\$38,179)	(\$7,069)
77	(\$2,088,140)	(\$1,832,338)	(\$1,352,959)	(\$1,191,412)	(\$697,335)
78	(\$4,240,311)	(\$3,906,082)	(\$3,404,473)	(\$3,278,388)	(\$3,035,840)
79	(\$6,668,592)	(\$6,383,805)	(\$6,086,201)	(\$6,042,053)	(\$6,000,376)
80	(\$9,336,759)	(\$9,148,539)	(\$9,018,970)	(\$9,008,285)	(\$8,998,344)
81	7	8	9	10	11
83					
160					
161					
162					
163					
164					

1468

Unwinds

	M	N	O	P	Q
47	-24.49%			-2.117332352	-2.389794829
48	-24.49%			-1.721885385	-1.93993716
49	-24.49%			-1.351969452	-1.519123415
50	-24.49%			-1.004486846	-1.123829663
51	-24.49%			-0.67687153	-0.7511368
52	-24.49%			-0.366974026	-0.398599594
53	-24.49%			-0.072975861	-0.064149363
54	-24.49%			0.206675095	0.253979584
55	6.46%			0.473314222	0.557306367
56	47.61%			0.728098728	0.847147417
57	47.61%			0.972037994	1.124650998
58	47.61%			1.206017731	1.390824689
59	47.61%				
60					
61					
62				7.9014%	Put Unwind P/L
63			60	31.8571%	31.9080%
64			65	26.8824%	26.9161%
65	Expiry		70	21.9640%	21.9516%
66	54		75	17.1723%	17.0675%
67	\$23,985,639		80	12.6126%	12.3630%
68	\$20,987,434		85	8.4095%	7.9795%
69	\$17,989,230		90	4.6800%	4.0712%
70	\$14,991,025		95	1.5058%	0.7615%
71	\$11,992,820		100	-1.0821%	-1.8904%
72	\$8,994,615		105	-3.1047%	-3.8997%
73	\$5,996,410		110	-4.6229%	-5.3417%
74	\$2,998,205		115	-5.7202%	-6.3249%
75	\$0		120	-6.4861%	-6.9642%
76	\$0		125	-7.0040%	-7.3621%
77	\$0				
78	(\$2,998,205)				
79	(\$5,996,410)				
80	(\$8,994,615)				
81	19				
83					
160					
161					
162					
163					
164					

## Unwinds

	R	S	T	U	V	W	X
47	-2.821968019	-3.158998635	-3.665420633	-4.553246854	-6.802366469	-7.848344449	-13.57172836
48	-2.286530295	-2.557218584	-2.96436809	-3.678880712	-5.490817256	-6.333897908	-10.94862994
49	-1.785661755	-1.994290942	-2.308577232	-2.86096581	-4.263944903	-4.917227741	-8.49488523
50	-1.315168081	-1.465501703	-1.692556412	-2.092652859	-3.111475476	-3.586470674	-6.189946377
51	-0.871574847	-0.966945948	-1.111756534	-1.36826814	-2.024898398	-2.331799537	-4.016792222
52	-0.451971643	-0.495352659	-0.562366979	-0.683058978	-0.997084655	-1.144982455	-1.961164735
53	-0.053896245	-0.047954535	-0.041163937	-0.033004575	-0.02200305	-0.0190552	-0.011001525
54	0.324752939	0.377610408	0.454604219	0.585326953	0.905494241	1.051926421	1.843993057
55	0.685784024	0.783374319	0.92730487	1.174888247	1.789836182	2.073076537	3.61267694
56	1.030763876	1.1710982	1.378989522	1.738237986	2.634860791	3.048826907	5.302726156
57	1.361059203	1.542318101	1.811447619	2.277607997	3.443915808	3.98304317	6.92083619
58	1.677869265	1.898381871	2.226249358	2.79495666	4.219938803	4.879117341	8.47288218
59							
60							
61							
62							
63	31.9631%	31.9912%	32.0195%	32.0477%	32.0760%	32.0816%	32.0929%
64	26.9642%	26.9914%	27.0195%	27.0477%	27.0760%	27.0816%	27.0929%
65	21.9724%	21.9938%	22.0198%	22.0477%	22.0760%	22.0816%	22.0929%
66	17.0141%	17.0111%	17.0239%	17.0480%	17.0760%	17.0816%	17.0929%
67	12.1627%	12.0940%	12.0557%	12.0527%	12.0760%	12.0816%	12.0929%
68	7.5618%	7.3712%	7.2095%	7.1012%	7.0774%	7.0818%	7.0929%
69	3.4112%	3.0628%	2.7082%	2.3679%	2.1185%	2.0970%	2.0930%
70	-0.0935%	-0.5805%	-1.1238%	-1.7454%	-2.4727%	-2.6269%	-2.8821%
71	-2.8355%	-3.3860%	-4.0178%	-4.7805%	-5.8146%	-6.0927%	-6.8550%
72	-4.8144%	-5.3365%	-5.9206%	-6.5926%	-7.3910%	-7.5648%	-7.8681%
73	-6.1327%	-6.5589%	-7.0033%	-7.4510%	-7.8258%	-7.8701%	-7.9013%
74	-6.9461%	-7.2520%	-7.5383%	-7.7738%	-7.8946%	-7.9000%	-7.9014%
75	-7.4132%	-7.6098%	-7.7697%	-7.8713%	-7.9010%	-7.9014%	-7.9014%
76	-7.6644%	-7.7792%	-7.8582%	-7.8954%	-7.9014%	-7.9014%	-7.9014%
77							
78							
79							
80							
81							
83							
160							
161							
162							
163							
164							

1470

Unwinds

	Y	Z	AA	AB	AC	AD
47		70	-2.651302037	-2.997104504	-3.54465584	-3.971142369
48		75	-2.257812729	-2.549473853	-3.011868798	-3.372341427
49		80	-1.889728063	-2.130743344	-2.513479804	-2.812200555
50		85	-1.543965667	-1.737406492	-2.045315308	-2.286029085
51		90	-1.21797221	-1.366558643	-1.60391808	-1.789941428
52		95	-0.909608852	-1.015766671	-1.18639212	-1.32068276
53		100	-0.617066123	-0.682972134	-0.790287391	-0.875499478
54		105	-0.338799578	-0.366418083	-0.413512709	-0.452041291
55		110	-0.073480446	-0.064592918	-0.054268906	-0.048286113
56		115	0.180042751	0.223813275	0.289003125	0.337518343
57		120	0.422774396	0.499943076	0.617663327	0.706900522
58		125	0.655595818	0.764799076	0.932905022	1.0612016
59						
60						
61						
62			3.8314%	Call Unwind P/L		
63	32.0986%	60	3.830%	3.831%	3.831%	3.831%
64	27.0986%	65	3.825%	3.830%	3.831%	3.831%
65	22.0986%	70	3.806%	3.825%	3.831%	3.831%
66	17.0986%	75	3.747%	3.801%	3.826%	3.830%
67	12.0986%	80	3.599%	3.726%	3.803%	3.822%
68	7.0986%	85	3.285%	3.532%	3.720%	3.781%
69	2.0986%	90	2.709%	3.120%	3.487%	3.638%
70	-2.9014%	95	1.766%	2.362%	2.963%	3.253%
71	-7.9014%	100	0.369%	1.138%	1.977%	2.426%
72	-7.9014%	105	-1.540%	-0.645%	0.378%	0.958%
73	-7.9014%	110	-3.981%	-3.025%	-1.918%	-1.279%
74	-7.9014%	115	-6.934%	-5.988%	-4.906%	-4.291%
75	-7.9014%	120	-10.349%	-9.472%	-8.503%	-7.977%
76	-7.9014%	125	-14.161%	-13.391%	-12.586%	-12.178%
77						
78						
79						
80						
81						
83						
160						
161						
162						
163						
164						

## Unwinds

	AE	AF	AG	AH	AI
47	-4.611437799	-5.733010778	-8.571822182	-9.891492037	-17.11041158
48	-3.913855813	-4.862973182	-7.266765787	-8.384542715	-14.50029879
49	-3.261311445	-4.049107363	-6.04596706	-6.974885767	-12.05870134
50	-2.648340233	-3.284597942	-4.899202927	-5.650716606	-9.765173073
51	-2.070415601	-2.563799286	-3.818004944	-4.402256713	-7.602777106
52	-1.523745797	-1.881982249	-2.795279388	-3.221314962	-5.557325993
53	-1.005122968	-1.235145936	-1.825024919	-2.100961605	-3.616817056
54	-0.51180911	-0.619875456	-0.902119199	-1.035281873	-1.771005615
55	-0.041448561	-0.033232782	-0.022155188	-0.019186956	-0.011077594
56	0.408000028	0.527328097	0.81868613	0.951732967	1.670605043
57	0.838317244	1.064027959	1.623735924	1.881324398	3.28070463
58	1.251065509	1.578815491	2.395917221	2.772962557	4.825067225
59					
60					
61					
62					
63	3.831%	3.831%	3.831%	3.831%	3.831%
64	3.831%	3.831%	3.831%	3.831%	3.831%
65	3.831%	3.831%	3.831%	3.831%	3.831%
66	3.831%	3.831%	3.831%	3.831%	3.831%
67	3.830%	3.831%	3.831%	3.831%	3.831%
68	3.817%	3.830%	3.831%	3.831%	3.831%
69	3.753%	3.817%	3.831%	3.831%	3.831%
70	3.518%	3.728%	3.827%	3.831%	3.831%
71	2.893%	3.361%	3.752%	3.798%	3.831%
72	1.605%	2.348%	3.235%	3.431%	3.786%
73	-0.549%	0.325%	1.500%	1.813%	2.668%
74	-3.603%	-2.810%	-1.853%	-1.637%	-1.231%
75	-7.421%	-6.845%	-6.319%	-6.245%	-6.175%
76	-11.782%	-11.431%	-11.209%	-11.191%	-11.175%
77					
78					
79					
80					
81					
83					
160					
161					
162					
163					
164					

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## Factors

	A	B	C	D	E
1	Cobalt Trading Partners LLC				
2	Pricing Factors - 10/22/01			8-17-01 "Low"	
4					
5				8-20-01 "High"	
6					
7					
8					
9					
10					
11					
12					
13					
15					
16					
17					
19					
20					
21					
23					
24					
25					
26					
28					
29					
30					
35					
36					
37					
38					
39					
40					
42					
43					
44					
46					
47					
48					
54					
55					
65					
66	Confidential				
70					

<u>Initial Collar Settings</u>			
Collar Cost	100/108	100/109	100/110
54	2.46%	2.80%	4.07%
Put Cost	100	PUT Vol	100
54	7.90%	54	52.50%
Call Cost	108	109	110
54	5.44%	5.10%	3.83%
Call Vol	108	109	110
54	49.30%	49.10%	48.25%
<u>Unwinds</u>			
Call Vol	108	109	110
54	51.40%	51.20%	50.50%
PUT Vol	100		
54	50.25%		

<u>In - Out Vol Differentials</u>			
PUT	100		
54	-2.25%		
CALL	108	109	110
54	2.10%	2.10%	2.25%
NET	108	109	110
54	4.35%	4.35%	4.50%

## Initial Collar Settings

Collar Cost	100/108	100/109	100/110
54	2.46%	2.80%	4.07%
Put Cost	100	PUT Vol	100
54	7.90%	54	52.50%
Call Cost	108	109	110
54	5.44%	5.10%	3.83%
Call Vol	108	109	110
54	49.30%	49.10%	48.25%

## Unwinds

Call Vol	108	109	110
54	51.40%	51.20%	50.50%
PUT Vol	100		
54	50.25%		

## In - Out Vol Differentials

PUT	100		
54	-2.25%		
CALL	108	109	110
54	2.10%	2.10%	2.25%
NET	108	109	110
54	4.35%	4.35%	4.50%

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Factors

	F	G	I	J	K	L
1	Cobalt Trading Partners LLC					
2	Pricing Factors - 08/20/01					
4						
5					67	
6						
7						
8						
9	100/111	100/112				
10	3.48%	3.86%			Collar Cost	
11						
12					Put Cost	100
13					8.75%	PUT Vol 120
15						
16	111	112			Call Cost	
17	4.42%	4.04%				
19						
20	111	112			CALL Vol	
21	48.55%	47.85%				
23						
24						
25	111	112			CALL Vol	
26	50.65%	49.95%				
28						
29					Put Cost	100
30					50.50%	
35						
36						
37						
38						
39						
40					PUT	100
42					120	-2.25%
43	111	112			CALL	
44	2.10%	2.10%			120	0.00% 0.00%
46						
47	111	112			NET	
48	4.35%	4.35%			120	2.25% 2.25%
54						
55	Confidential					
65						
66	Quellos Custom Strategies, LLC					
70						

## Factors

	M	N	O	P	Q
1					
2					
4					
5					
6					
7					
8					
9	100/108	100/109	100/110	100/111	100/112
10	3.62%	3.96%	4.33%	4.65%	4.95%
11					
12	100				
13	52.50%				
15					
16	108	109	110	111	112
17	5.44%	5.10%	4.76%	4.42%	4.04%
19					
20	108	109	110	111	112
21	49.30%	49.10%	48.90%	48.55%	47.85%
23	<u>Unwinds</u>				
24					
25	108	109	110	111	112
26	51.40%	51.20%	51.00%	50.65%	49.95%
28					
29					
30					
35					
36	<u>In - Out Vol Differentials</u>				
37					
38					
39					
40					
42					
43	108	109	110	111	112
44	2.10%	2.10%	2.10%	2.10%	2.10%
46					
47	108	109	110	111	112
48	4.35%	4.35%	4.35%	4.35%	4.35%
54					
55					
65					
66					
70					



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Equities

	A	B	C	D
1	<b>Cobalt Trading Partners LLC</b>			
2	<i>Portfolio as of 11/07/01</i>			
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
33				
34				
39				
40	Confidential			
50				

	Stock	Trade Date	Shares
1	AMAT Equity	11/7/2001	139,200
2	CSCO Equity	11/7/2001	325,000
3	DELL Equity	11/7/2001	295,000
4	EBAY Equity	11/7/2001	200,000
5	FDC Equity	11/7/2001	123,500
6	IMNX Equity	11/7/2001	133,100
7	ORCL Equity	11/7/2001	272,300
8	Q Equity	11/7/2001	195,000
9	QCOM Equity	11/7/2001	103,200
10	XLNX Equity	11/7/2001	121,000

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Equities

	E	F	G	H	J
1					
2					
4					
5	Trade Price	Purchase Price	Portfolio	Cost Weighting	Basis
6	39.9061	5,554,929	3	9.26%	89.3125
7	19.1075	6,209,938	3	10.36%	61.3125
8	26.3146	7,762,807	1	12.95%	51.5600
9	56.9940	11,398,800	2	19.01%	72.5313
10	71.5045	8,830,806	3	14.73%	54.5625
11	25.6466	3,413,562	2	5.69%	63.5833
12	15.5597	4,236,906	3	7.07%	38.5313
13	11.5000	2,242,500	2	3.74%	46.0000
14	55.1282	5,689,230	2	9.49%	143.2500
15	38.2200	4,624,620	2	7.71%	70.2500
16					
17	Total Portfolio Purchase Price 59,964,098				
33					
34					
39					
40					
50					

## Equities

	K	L
1		
2		
4		
5	<b>Basis Value</b>	<b>Initial Loss</b>
6	12,432,300	(6,877,371)
7	19,926,563	(13,716,625)
8	15,210,200	(7,447,393)
9	14,506,250	(3,107,450)
10	6,738,469	2,092,337
11	8,462,942	(5,049,379)
12	10,492,059	(6,255,153)
13	8,970,000	(6,727,500)
14	14,783,400	(9,094,170)
15	8,500,250	(3,875,630)
16		
17	Approximate Initial Loss	(60,058,334)
33		
34		
39		
40	Quellos Custom Strategies, LLC	
50		

Cobalt

	A	B	C	D	E	F	G	H
	1	1	2	3	4	5	6	7
2								
3								
4			11/7/2001	Available		Share		Portfolio
5		Stock	Trade Date	Shares		Allocation	Basis	Draw
6	1	AMAT Equity	11/7/2001			139,200	89.31250	3
7	2	CSCO Equity	11/7/2001			325,000	61.31250	3
8	3	DELL Equity	11/7/2001			295,000	51.56000	1
9	4	EBAY Equity	11/7/2001			200,000	72.53125	2
10	5	FDC Equity	11/7/2001			123,500	54.56250	3
11	6	IMNX Equity	11/7/2001			133,100	63.58333	2
12	7	ORCL Equity	11/7/2001			272,300	38.53125	3
13	8	Q Equity	11/7/2001			195,000	46.00000	2
14	9	QCOM Equity	11/7/2001			103,200	143.25000	2
15	10	XLNX Equity	11/7/2001			121,000	70.25000	2
16								
17		Totals				1,907,300		
19								
20				Warrant Strike Price		89,946		
22								
23							49.40640	9.50
24							42.20500	23.10
25							25.24540	(1.07)
26							15.53725	(41.46)
27							-16.94200	(88.45)
28							37.93673	12.29
29							22.97155	7.41
30							34.50000	23.00
31							88.12180	32.99
32							32.03000	(6.19)
54								

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Cobalt

	I	J	K	L	M	N	O
1	8	9	10	11	12	13	14
2	last Trade						
3							
4		11/7/2001	Purchase	Initial	Cost	Share	
5	Basis Value	Trade Price	Price	Loss	Weighting	Weighting	% Loss
6	12,432,300	39.9061	5,554,929.12	(6,877,371)	9.26%	7.30%	-55.32%
7	19,926,563	19.1075	6,209,937.50	(13,716,625)	10.36%	17.04%	-68.84%
8	15,210,200	26.3146	7,762,807.00	(7,447,393)	12.95%	15.47%	-48.96%
9	14,506,250	56.9940	11,398,800.00	(3,107,450)	19.01%	10.49%	-21.42%
10	6,738,469	71.5045	8,830,805.75	2,092,337	14.73%	6.48%	31.05%
11	8,462,942	25.6466	3,413,562.46	(5,049,379)	5.69%	6.98%	-59.66%
12	10,492,059	15.5597	4,236,906.31	(6,255,153)	7.07%	14.28%	-59.62%
13	8,970,000	11.5000	2,242,500.00	(6,727,500)	3.74%	10.22%	-75.00%
14	14,783,400	55.1282	5,689,230.24	(9,094,170)	9.49%	5.41%	-61.52%
15	8,500,250	38.2200	4,624,620.00	(3,875,630)	7.71%	6.34%	-45.59%
16							
17	120,022,432		59,964,098	(60,058,334)			
19							
20							
22							
23							
24							
25							
26							
27							
28							
29							
30							
31							
32							
54							

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Cobalt

	P	Q	R	S	T	U	V	W
1	15	16	17	18	19	20	21	22
2					(60,058,334)			
3					current			
4	Current FMV							Δ from
5	(5% Stock Increase)	Loss	Total FMV	% decline	% portfolio	loss		Yest. Close
6								
7	20.06	0	0	-67.28%	#N/A	#N/A	#N/A	3.48
8								
9	59.84	0	0	-17.49%	#N/A	#N/A	#N/A	12.36
10	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
11								
12	16.34	0	0	-57.60%	#N/A	#N/A	#N/A	-0.70
13								
14	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
15								
16								
17		#N/A	#N/A		#N/A	#N/A		
18								
19								
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24								
25								
26								
27								
28								
29								
30								
31								
32								
54								

1481

Cobalt

	X	Y	Z	AA	AB	AC	AD	AE
1	23	24	25	26	27	28	29	30
2		2 for 1		2				
3		3 for 1		3				1.11
4	4 for 1		4	2				
5	Equity	Fill in for Required Stocks!!!					Shares	Trade Price
6								
7	CSCO Equity	8/25/1995	2 for 1	2	25-Aug-95		-	19.11
8								
9	EBAY Equity	8/25/1995	2 for 1	2	25-Aug-95		-	56.99
10				#N/A	0-Jan-00		-	-
11								
12	ORCL Equity	12/30/1999	4 for 1	4	30-Dec-99		-	15.56
13				#N/A	0-Jan-00		-	-
14								
15								
16								
17								
19								
20								
22								
23								
24								
25								
26								
27								
28								
29								
30								
31								
32								
54								

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Cobalt

	AF	AG	AH	AI	AJ	AK	AL
1	31	32	33				
2							
3							
4							
5							
6							
7	8/25/1995	TRUE	4.48	7-Nov-01	#N/A	11.56%	12.056%
8							
9	8/25/1995	TRUE	4.48	7-Nov-01	#N/A	11.56%	12.056%
10		TRUE			#N/A	#N/A	#N/A
11							
12	12/30/1999	TRUE	54.73	7-Nov-01	#N/A	6.92%	7.422%
13							
14		TRUE			#N/A	#N/A	#N/A
15							
16							
17							
19							
20							
22							
23							
24							
25							
26							
27							
28							
29							
30							
31							
32							
54							



## Prices

	A	B	C	D	E	F	G
1			ADBE Equity	ADP Equity	AMAT Equity	AMCC Equity	AOL Equity
2			1,500,000.00	1,000,000.00	1,100,000.00	900,000.00	1,000,000.00
3		Date	Px Last	Px Last	Px Last	Px Last	Px Last
4	1	8/14/2000	60.8125	58.0000	74.8125	80.0625	53.0000
5	2	8/15/2000	60.0625	58.1250	77.8125	80.5625	54.5000
6	3	8/16/2000	57.9688	58.2500	80.9375	82.3125	55.5000
7	4	8/17/2000	62.4375	57.0625	84.0000	84.6875	55.1875
8	5	8/18/2000	61.2813	58.8750	83.9375	87.0625	54.8750
9	6	8/21/2000	59.9375	59.1250	81.4375	85.1875	56.8125
10	7	8/22/2000	61.1250	59.2500	82.0000	88.5000	57.7500
11	8	8/23/2000	63.0313	58.7500	85.4375	94.4688	58.7500
12	9	8/24/2000	64.7500	58.7500	85.5625	94.9688	60.0000
13	10	8/25/2000	64.4375	58.5000	84.6875	94.2813	60.0000
14	11	8/28/2000	65.1875	60.0000	83.1875	91.9063	58.8125
15	12	8/29/2000	65.8125	59.3125	85.0625	97.7813	58.5625
16	13	8/30/2000	64.7813	59.0625	84.3750	98.8438	59.1250
17	14	8/31/2000	65.0000	59.6446	86.3125	101.4688	58.9375
18	15	9/1/2000	67.6563	60.3125	84.8125	102.0938	57.7500
19	16	9/5/2000	66.6250	61.2500	84.4375	94.9063	57.3750
20	17	9/6/2000	63.7500	61.5625	79.6250	89.5234	56.0000
21	18	9/7/2000	68.4688	61.8164	80.3750	99.4688	56.0000
22	19	9/8/2000	66.9375	62.5625	75.5000	92.9063	55.5000
23	20	9/11/2000	63.6250	63.0000	75.1875	91.3750	56.2500
24	21	9/12/2000	61.4063	62.6875	71.6875	88.2813	56.0000
25	22	9/13/2000	62.9688	63.8750	74.0000	89.9375	56.0000
26	23	9/14/2000	62.6875	63.9375	74.9375	92.0000	56.0000
27	24	9/15/2000	66.3125	63.4414	73.1250	87.5000	55.2500
28	25	9/18/2000	71.0000	62.7500	72.2500	88.1250	55.6250
29	26	9/19/2000	76.4375	63.1250	76.9375	96.6563	56.0000
30	27	9/20/2000	78.8750	61.3750	78.0000	97.5000	54.9375
31	28	9/21/2000	78.5000	62.1250	73.5000	94.5000	53.5000
32	29	9/22/2000	74.7813	62.8750	70.0000	99.2500	55.2500
33	30	9/25/2000	73.8125	64.3125	67.4375	99.5000	56.4400
34	31	9/26/2000	75.6563	67.1875	65.4375	98.8750	55.5000
35	32	9/27/2000	74.1875	66.3125	63.8750	101.3438	53.5000
36	33	9/28/2000	80.2500	66.9375	63.8750	107.0000	53.5900
37	34	9/29/2000	77.6250	66.8750	59.3125	103.5313	53.6500
38	35	10/2/2000	81.5000	64.8125	56.6875	95.9063	55.2500
39	36	10/3/2000	81.7188	63.8125	51.6250	89.2266	55.3500
40	37	10/22/2000	79.0000	62.9375	54.1875	95.9375	58.6500

## Prices

	H	I	J	K	L	M	N
1	BEAS Equity	BGEN Equity	BRCD Equity	CCU Equity	CSCO Equity	DELL Equity	EBAY Equity
2	900,000.00	900,000.00	900,000.00	950,000.00	850,000.00	1,500,000.00	800,000.00
3	Px Last	Px Last	Px Last	Px Last	Px Last	Px Last	Px Last
4	50.4375	65.5625	103.1250	82.1875	64.5000	36.6875	48.1875
5	48.8750	67.5625	101.2500	83.6875	63.1875	38.0625	51.8750
6	57.0000	70.2500	98.3750	83.0000	63.0625	38.4375	57.5000
7	57.9375	70.5000	105.9688	83.0625	63.4375	39.1250	63.0625
8	54.5000	67.5000	105.0313	83.8125	63.5000	38.7500	55.0000
9	53.4688	68.5625	105.2813	81.6875	65.5000	38.7500	56.1250
10	56.3125	69.6250	106.9375	76.8750	64.8125	37.4375	56.7500
11	58.3125	70.8750	107.5313	76.7500	67.1875	38.6875	57.8125
12	58.2500	70.2344	109.1563	73.3750	66.5000	39.0000	61.3750
13	59.6250	71.2500	105.9375	76.0000	65.5000	38.6250	62.1875
14	59.6250	72.8125	102.8125	76.6250	66.0625	39.5000	62.9375
15	61.8750	72.1250	104.7813	77.7500	66.5625	40.5625	61.1250
16	63.5000	68.6875	111.6875	77.2500	66.5625	39.9375	61.0625
17	68.0625	69.1250	112.9063	72.0000	68.6250	43.6250	62.0000
18	70.7500	68.5000	114.8125	68.5625	68.5625	43.0625	62.8750
19	68.5000	66.4375	114.0000	63.9375	66.0000	41.0000	67.5000
20	63.3125	61.6250	108.4375	64.2500	64.2500	39.5000	65.6250
21	66.5625	62.8125	111.6250	64.0625	66.2500	40.1875	66.6250
22	63.0625	63.5000	107.8750	64.6250	63.8750	38.8750	65.7969
23	61.9375	62.8750	107.0313	64.1250	61.1875	38.3125	64.7500
24	61.1250	62.3750	104.7813	62.3125	58.8750	37.4375	62.1875
25	65.5625	65.0625	105.8750	65.3750	61.3125	36.2500	62.5000
26	66.8125	62.0625	109.2500	64.7500	61.2500	36.6250	68.4375
27	64.0625	57.2969	108.6797	63.6250	62.7500	35.7500	67.4375
28	63.5625	54.0000	105.1875	60.7500	60.0625	34.4375	66.0625
29	67.4375	56.6250	108.0000	56.0625	62.0000	36.3125	65.6875
30	69.0625	59.8750	114.3438	59.8750	63.1250	38.5625	76.5625
31	68.8750	59.0625	116.5000	58.3125	61.1250	37.9375	71.1875
32	74.4375	59.9375	126.9609	58.2500	60.3125	35.9375	71.8594
33	77.3125	59.8125	122.0625	59.1875	57.1875	34.3125	72.3750
34	76.5625	59.7500	118.2813	58.6875	55.1875	33.6250	70.6875
35	78.7500	59.2500	117.5000	56.5000	57.3125	32.4375	63.5000
36	78.8125	63.8750	120.8359	56.0000	59.4375	33.4375	69.1250
37	77.8750	61.0000	118.0000	56.5000	55.2500	30.8125	68.6875
38	78.3750	59.1875	112.1797	52.1250	55.5000	29.2500	66.8750
39	71.2500	59.1250	106.5000	52.5000	56.2500	28.5625	62.0000
40	74.3125	57.5625	108.3438	54.5000	58.5625	28.1875	64.6250

## Prices

	O	P	Q	R	S	T
1	MU Equity	NOK Equity	ORCL Equity	PCS Equity	Q Equity	SUNW Equity
2	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	2,000,000.00	1,000,000.00
3	Px Last	Px Last	Px Last	Px Last	Px Last	Px Last
4	80.5000	41.0625	41.1875	53.1875	49.8750	57.0313
5	86.5000	40.1250	40.6250	51.6250	49.5000	58.6875
6	87.2500	39.3125	40.5938	50.1250	48.5625	57.6875
7	89.8750	41.2500	41.9688	52.7500	47.8750	59.7188
8	89.1250	41.0000	40.6563	54.0000	44.0000	61.1875
9	88.5000	41.5000	41.5938	52.1875	46.1875	61.0313
10	88.0000	42.8750	41.7813	49.0000	44.5000	61.0938
11	90.7500	42.1875	41.4375	47.8750	46.1250	63.3438
12	92.5625	41.7500	42.3438	48.0000	47.5000	63.8750
13	89.0000	41.6250	42.3125	48.9375	50.3125	62.3750
14	89.3125	41.0000	43.3750	49.9375	50.0000	63.9063
15	87.2500	40.5625	43.8750	47.2500	50.6875	63.5625
16	83.6875	42.2500	44.1250	48.5000	51.1875	63.5625
17	81.5000	44.7500	45.4688	50.1875	51.5156	63.4688
18	78.3125	47.0000	46.3125	50.5821	51.8750	64.3125
19	78.5000	44.6250	45.5313	49.4375	51.0625	62.5313
20	70.0000	43.3750	44.6250	48.2500	51.5000	58.8125
21	73.5000	44.2500	45.5938	45.8125	49.4375	61.9688
22	69.0000	42.0000	43.2813	47.1055	48.7500	60.3750
23	64.8750	42.5000	41.7188	46.7500	49.5625	57.6250
24	63.3125	43.0625	39.6875	48.2696	47.7500	57.1563
25	66.4375	43.5000	40.9063	47.5196	47.6250	59.0938
26	63.0000	44.1875	42.4688	48.0000	48.4375	58.7500
27	59.2500	43.7500	39.1563	45.4375	47.3359	56.5313
28	58.5000	42.8750	38.2344	43.3750	44.8750	57.6250
29	65.6875	45.0000	39.6563	40.8125	47.0000	58.8438
30	66.4375	43.6875	39.9688	33.2500	46.6875	59.8438
31	55.1250	39.8750	39.4688	28.5000	43.5000	58.2188
32	52.7500	43.0000	40.3672	28.0000	48.1250	59.0313
33	46.7500	41.7500	39.3750	31.5625	48.6875	59.0000
34	49.6250	41.5000	39.7188	31.5000	48.8750	58.7500
35	51.6250	40.7500	39.9375	32.0625	47.4375	58.9688
36	49.5000	40.9375	40.7422	34.5000	48.0000	61.8125
37	46.0000	40.8750	39.3750	35.1250	48.1250	58.3750
38	42.3750	39.8750	39.3750	35.7500	46.6875	56.7813
39	43.0625	40.5000	34.7500	34.1250	46.6250	54.1875
40	46.9375	41.1250	34.0625	36.2500	49.5000	55.7266

## Prices

	U	V	W	X	Z	AB	AC
1	TER Equity	VRTS Equity	WCOM Equity	XLNX Equity	QQQ Index	0.580023814	-0.930491743
2	500,000.00	500,000.00	1,000,000.00	800,000.00			
3	Px Last	Px Last	Px Last	Px Last	Px Last		Basket Index Price
4	57.5625	98.2500	34.1190	82.6250	93.0000	365.0000	60.23
5	58.8750	102.2500	33.7586	84.5000	93.0000	364.0000	60.95
6	59.8125	109.8125	33.5184	85.0625	93.9375	363.0000	61.60
7	63.3125	111.0000	33.7586	88.0000	95.7500	362.0000	63.35
8	66.8750	107.1250	33.2180	87.6875	95.2500	361.0000	62.48
9	64.3125	108.8750	33.7586	86.8125	95.5000	358.0000	62.44
10	63.5625	111.5000	32.9777	87.6875	95.5000	357.0000	62.45
11	67.2500	114.0000	33.2180	90.8750	97.0625	356.0000	63.93
12	69.1250	115.6875	33.5784	91.0000	98.5625	355.0000	64.50
13	68.0625	116.9375	34.6597	91.5625	98.0313	354.0000	64.58
14	67.3125	118.7500	35.7409	89.3125	98.5000	351.0000	64.65
15	67.4375	118.6250	35.2003	88.0156	99.0000	350.0000	64.97
16	64.4375	113.3125	34.9600	87.5000	98.8750	349.0000	64.87
17	64.8321	120.5625	35.0801	88.8750	101.6250	348.0000	65.90
18	63.9375	121.7500	35.5006	91.8750	102.6250	347.0000	66.24
19	63.7500	121.8750	32.4371	89.0625	99.5000	343.0000	64.82
20	59.3125	118.5000	30.2746	81.9375	96.0000	342.0000	62.06
21	61.8789	123.1250	29.3736	87.5625	98.1250	341.0000	63.71
22	57.0000	117.2500	28.7729	85.2500	95.1250	340.0000	61.82
23	57.1875	112.0625	28.8330	85.1250	92.8125	337.0000	60.84
24	53.5625	112.5625	28.8330	81.0625	91.3750	336.0000	59.43
25	51.4375	120.8750	29.1934	84.3125	93.5000	335.0000	60.80
26	51.5000	123.1875	28.8931	83.5625	93.0000	334.0000	61.23
27	51.8750	122.6094	28.2924	80.8125	91.3125	333.0000	59.94
28	47.8750	121.3750	27.5716	76.7500	89.8750	330.0000	58.89
29	51.2500	130.0000	27.3313	84.5000	93.1875	329.0000	61.39
30	49.2149	136.9375	26.2500	86.8750	94.6250	328.0000	62.54
31	36.5000	136.1250	25.5893	84.8750	87.7500	327.0000	60.11
32	39.0000	143.7656	25.4691	84.5625	92.9375	326.0000	61.25
33	39.0000	135.6250	25.1087	77.6875	90.4688	323.0000	60.32
34	38.6875	139.1250	24.5080	80.3750	89.4375	322.0000	60.29
35	37.1875	141.2500	25.0487	79.6875	89.5625	321.0000	59.76
36	38.2500	148.0000	27.8719	87.7500	91.5625	320.0000	61.92
37	35.0000	142.0000	29.1934	85.6250	88.7500	319.0000	60.21
38	33.4375	139.8750	28.2924	87.1250	86.7500	316.0000	58.91
39	32.5625	130.4375	28.7129	84.7500	83.3750	315.0000	57.02
40	34.0000	137.0000	27.0910	89.6250	85.6250	296.0000	58.60

## Prices

	AD	AE	AF	AG	AH	AI
1	Basket Shares	ADBE Equity	ADP Equity	AMAT Equity	AMCC Equity	AOL Equity
2	22,100,000.00	1,500,000.00	1,000,000.00	1,100,000.00	900,000.00	1,000,000.00
3						
4	1,331,109,675	91,218,750.00	58,000,000.00	82,293,750.00	72,056,250.00	53,000,000.00
5	1,347,027,350	90,093,750.00	58,125,000.00	85,593,750.00	72,506,250.00	54,500,000.00
6	1,361,462,275	86,953,200.00	58,250,000.00	89,031,250.00	74,081,250.00	55,500,000.00
7	1,400,086,870	93,656,250.00	57,062,500.00	92,400,000.00	76,218,750.00	55,187,500.00
8	1,380,746,295	91,921,950.00	58,875,000.00	92,331,250.00	78,356,250.00	54,875,000.00
9	1,379,968,165	89,906,250.00	59,125,000.00	89,581,250.00	76,668,750.00	56,812,500.00
10	1,380,212,175	91,687,500.00	59,250,000.00	90,200,000.00	79,650,000.00	57,750,000.00
11	1,412,786,965	94,546,950.00	58,750,000.00	93,981,250.00	85,021,920.00	58,750,000.00
12	1,425,489,500	97,125,000.00	58,750,000.00	94,118,750.00	85,471,920.00	60,000,000.00
13	1,427,144,120	96,656,250.00	58,500,000.00	93,156,250.00	84,853,170.00	60,000,000.00
14	1,428,840,995	97,781,250.00	60,000,000.00	91,506,250.00	82,715,670.00	58,812,500.00
15	1,435,772,245	98,718,750.00	59,312,500.00	93,568,750.00	88,003,170.00	58,562,500.00
16	1,433,675,745	97,171,950.00	59,062,500.00	92,812,500.00	88,959,420.00	59,125,000.00
17	1,456,484,640	97,500,000.00	59,644,600.00	94,943,750.00	91,321,920.00	58,937,500.00
18	1,463,801,570	101,484,450.00	60,312,500.00	93,293,750.00	91,884,420.00	57,750,000.00
19	1,432,493,495	99,937,500.00	61,250,000.00	92,881,250.00	85,415,670.00	57,375,000.00
20	1,371,576,910	95,625,000.00	61,562,500.00	87,587,500.00	80,571,060.00	56,000,000.00
21	1,408,032,795	102,703,200.00	61,816,400.00	88,412,500.00	89,521,920.00	56,000,000.00
22	1,366,125,390	100,406,250.00	62,562,500.00	83,050,000.00	83,615,670.00	55,500,000.00
23	1,344,639,345	95,437,500.00	63,000,000.00	82,706,250.00	82,237,500.00	56,250,000.00
24	1,313,440,315	92,109,450.00	62,687,500.00	78,856,250.00	79,453,170.00	56,000,000.00
25	1,343,625,675	94,453,200.00	63,875,000.00	81,400,000.00	80,943,750.00	56,000,000.00
26	1,353,143,150	94,031,250.00	63,937,500.00	82,431,250.00	82,800,000.00	56,000,000.00
27	1,324,720,590	99,468,750.00	63,441,400.00	80,437,500.00	78,750,000.00	55,250,000.00
28	1,301,365,375	106,500,000.00	62,750,000.00	79,475,000.00	79,312,500.00	55,625,000.00
29	1,356,793,945	114,656,250.00	63,125,000.00	84,631,250.00	86,990,670.00	56,000,000.00
30	1,382,148,220	118,312,500.00	61,375,000.00	85,800,000.00	87,750,000.00	54,937,500.00
31	1,328,467,525	117,750,000.00	62,125,000.00	80,850,000.00	85,050,000.00	53,500,000.00
32	1,353,721,555	112,171,950.00	62,875,000.00	77,000,000.00	89,325,000.00	55,250,000.00
33	1,333,061,200	110,718,750.00	64,312,500.00	74,181,250.00	89,550,000.00	56,440,000.00
34	1,332,483,170	113,484,450.00	67,187,500.00	71,981,250.00	88,987,500.00	55,500,000.00
35	1,320,598,795	111,281,250.00	66,312,500.00	70,262,500.00	91,209,420.00	53,500,000.00
36	1,368,503,285	120,375,000.00	66,937,500.00	70,262,500.00	96,300,000.00	53,590,000.00
37	1,330,571,570	116,437,500.00	66,875,000.00	65,243,750.00	93,178,170.00	53,650,000.00
38	1,302,001,100	122,250,000.00	64,812,500.00	62,356,250.00	86,315,670.00	55,250,000.00
39	1,260,038,790	122,578,200.00	63,812,500.00	56,787,500.00	80,303,940.00	55,350,000.00
40	1,295,161,395	118,500,000.00	62,937,500.00	59,606,250.00	86,343,750.00	58,650,000.00

## Prices

	AJ	AK	AL	AM	AN	AO
1	BEAS Equity	BGEN Equity	BRCDEquity	CCU Equity	CSCO Equity	DELL Equity
2	900,000.00	900,000.00	900,000.00	950,000.00	850,000.00	1,500,000.00
3						
4	45,393,750.00	59,006,250.00	92,812,500.00	78,078,125.00	54,825,000.00	55,031,250.00
5	43,987,500.00	60,806,250.00	91,125,000.00	79,503,125.00	53,709,375.00	57,093,750.00
6	51,300,000.00	63,225,000.00	88,537,500.00	78,850,000.00	53,603,125.00	57,656,250.00
7	52,143,750.00	63,450,000.00	95,371,920.00	78,909,375.00	53,921,875.00	58,687,500.00
8	49,050,000.00	60,750,000.00	94,528,170.00	79,621,875.00	53,975,000.00	58,125,000.00
9	48,121,920.00	61,706,250.00	94,753,170.00	77,603,125.00	55,675,000.00	58,125,000.00
10	50,681,250.00	62,662,500.00	96,243,750.00	73,031,250.00	55,090,625.00	56,156,250.00
11	52,481,250.00	63,787,500.00	96,778,170.00	72,912,500.00	57,109,375.00	58,031,250.00
12	52,425,000.00	63,210,960.00	98,240,670.00	69,706,250.00	56,525,000.00	58,500,000.00
13	53,662,500.00	64,125,000.00	95,343,750.00	72,200,000.00	55,675,000.00	57,937,500.00
14	53,662,500.00	65,531,250.00	92,531,250.00	72,793,750.00	56,153,125.00	59,250,000.00
15	55,687,500.00	64,912,500.00	94,303,170.00	73,862,500.00	56,578,125.00	60,843,750.00
16	57,150,000.00	61,818,750.00	100,518,750.00	73,387,500.00	56,578,125.00	59,906,250.00
17	61,256,250.00	62,212,500.00	101,615,670.00	68,400,000.00	58,331,250.00	65,437,500.00
18	63,675,000.00	61,650,000.00	103,331,250.00	65,134,375.00	58,278,125.00	64,593,750.00
19	61,650,000.00	59,793,750.00	102,600,000.00	60,740,625.00	56,100,000.00	61,500,000.00
20	56,981,250.00	55,462,500.00	97,593,750.00	61,037,500.00	54,612,500.00	59,250,000.00
21	59,906,250.00	56,531,250.00	100,462,500.00	60,859,375.00	56,312,500.00	60,281,250.00
22	56,756,250.00	57,150,000.00	97,087,500.00	61,393,750.00	54,293,750.00	58,312,500.00
23	55,743,750.00	56,587,500.00	96,328,170.00	60,918,750.00	52,009,375.00	57,468,750.00
24	55,012,500.00	56,137,500.00	94,303,170.00	59,196,875.00	50,043,750.00	56,156,250.00
25	59,006,250.00	58,556,250.00	95,287,500.00	62,106,250.00	52,115,625.00	54,375,000.00
26	60,131,250.00	55,856,250.00	98,325,000.00	61,512,500.00	52,062,500.00	54,937,500.00
27	57,656,250.00	51,567,210.00	97,811,730.00	60,443,750.00	53,337,500.00	53,625,000.00
28	57,206,250.00	48,600,000.00	94,668,750.00	57,712,500.00	51,053,125.00	51,656,250.00
29	60,693,750.00	50,962,500.00	97,200,000.00	53,259,375.00	52,700,000.00	54,468,750.00
30	62,156,250.00	53,887,500.00	102,909,420.00	56,881,250.00	53,656,250.00	57,843,750.00
31	61,987,500.00	53,156,250.00	104,850,000.00	55,396,875.00	51,956,250.00	56,906,250.00
32	66,993,750.00	53,943,750.00	114,264,810.00	55,337,500.00	51,265,625.00	53,906,250.00
33	69,581,250.00	53,831,250.00	109,856,250.00	56,228,125.00	48,609,375.00	51,468,750.00
34	68,906,250.00	53,775,000.00	106,453,170.00	55,753,125.00	46,909,375.00	50,437,500.00
35	70,875,000.00	53,325,000.00	105,750,000.00	53,675,000.00	48,715,625.00	48,656,250.00
36	70,931,250.00	57,487,500.00	108,752,310.00	53,200,000.00	50,521,875.00	50,156,250.00
37	70,087,500.00	54,900,000.00	106,200,000.00	53,675,000.00	46,962,500.00	46,218,750.00
38	70,537,500.00	53,268,750.00	100,961,730.00	49,518,750.00	47,175,000.00	43,875,000.00
39	64,125,000.00	53,212,500.00	95,850,000.00	49,875,000.00	47,812,500.00	42,843,750.00
40	66,881,250.00	51,806,250.00	97,509,420.00	51,775,000.00	49,778,125.00	42,281,250.00

## Prices

	AP	AQ	AR	AS	AT	AU
1	EBAY Equity	MU Equity	NOK Equity	ORCL Equity	PCS Equity	Q Equity
2	800,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	2,000,000.00
3						
4	38,550,000.00	80,500,000.00	41,062,500.00	41,187,500.00	53,187,500.00	99,750,000.00
5	41,500,000.00	86,500,000.00	40,125,000.00	40,625,000.00	51,625,000.00	99,000,000.00
6	46,000,000.00	87,250,000.00	39,312,500.00	40,593,800.00	50,125,000.00	97,125,000.00
7	50,450,000.00	89,875,000.00	41,250,000.00	41,968,800.00	52,750,000.00	95,750,000.00
8	44,000,000.00	89,125,000.00	41,000,000.00	40,656,300.00	54,000,000.00	88,000,000.00
9	44,900,000.00	88,500,000.00	41,500,000.00	41,593,800.00	52,187,500.00	92,375,000.00
10	45,400,000.00	88,000,000.00	42,875,000.00	41,781,300.00	49,000,000.00	89,000,000.00
11	46,250,000.00	90,750,000.00	42,187,500.00	41,437,500.00	47,875,000.00	92,250,000.00
12	49,100,000.00	92,562,500.00	41,750,000.00	42,343,800.00	48,000,000.00	95,000,000.00
13	49,750,000.00	89,000,000.00	41,625,000.00	42,312,500.00	48,937,500.00	100,625,000.00
14	50,350,000.00	89,312,500.00	41,000,000.00	43,375,000.00	49,937,500.00	100,000,000.00
15	48,900,000.00	87,250,000.00	40,562,500.00	43,875,000.00	47,250,000.00	101,375,000.00
16	48,850,000.00	83,687,500.00	42,250,000.00	44,125,000.00	48,500,000.00	102,375,000.00
17	49,600,000.00	81,500,000.00	44,750,000.00	45,468,800.00	50,187,500.00	103,031,200.00
18	50,300,000.00	78,312,500.00	47,000,000.00	46,312,500.00	50,582,100.00	103,750,000.00
19	54,000,000.00	78,500,000.00	44,625,000.00	45,531,300.00	49,437,500.00	102,125,000.00
20	52,500,000.00	70,000,000.00	43,375,000.00	44,625,000.00	48,250,000.00	103,000,000.00
21	53,300,000.00	73,500,000.00	44,250,000.00	45,593,800.00	45,812,500.00	98,875,000.00
22	52,637,520.00	69,000,000.00	42,000,000.00	43,281,300.00	47,105,500.00	97,500,000.00
23	51,800,000.00	64,875,000.00	42,500,000.00	41,718,800.00	46,750,000.00	99,125,000.00
24	49,750,000.00	63,312,500.00	43,062,500.00	39,687,500.00	48,269,600.00	95,500,000.00
25	50,000,000.00	66,437,500.00	43,500,000.00	40,906,300.00	47,519,600.00	95,250,000.00
26	54,750,000.00	63,000,000.00	44,187,500.00	42,468,800.00	48,000,000.00	96,875,000.00
27	53,950,000.00	59,250,000.00	43,750,000.00	39,156,300.00	45,437,500.00	94,671,800.00
28	52,850,000.00	58,500,000.00	42,875,000.00	38,234,400.00	43,375,000.00	89,750,000.00
29	52,550,000.00	65,687,500.00	45,000,000.00	39,656,300.00	40,812,500.00	94,000,000.00
30	61,250,000.00	66,437,500.00	43,687,500.00	39,968,800.00	33,250,000.00	93,375,000.00
31	56,950,000.00	55,125,000.00	39,875,000.00	39,468,800.00	28,500,000.00	87,000,000.00
32	57,487,520.00	52,750,000.00	43,000,000.00	40,367,200.00	28,000,000.00	96,250,000.00
33	57,900,000.00	46,750,000.00	41,750,000.00	39,375,000.00	31,562,500.00	97,375,000.00
34	56,550,000.00	49,625,000.00	41,500,000.00	39,718,800.00	31,500,000.00	97,750,000.00
35	50,800,000.00	51,625,000.00	40,750,000.00	39,937,500.00	32,062,500.00	94,875,000.00
36	55,300,000.00	49,500,000.00	40,937,500.00	40,742,200.00	34,500,000.00	96,000,000.00
37	54,950,000.00	46,000,000.00	40,875,000.00	39,375,000.00	35,125,000.00	96,250,000.00
38	53,500,000.00	42,375,000.00	39,875,000.00	39,375,000.00	35,750,000.00	93,375,000.00
39	49,600,000.00	43,062,500.00	40,500,000.00	34,750,000.00	34,125,000.00	93,250,000.00
40	51,700,000.00	46,937,500.00	41,125,000.00	34,062,500.00	36,250,000.00	99,000,000.00

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Prices

	AV	AW	AX	AY	AZ	BB
1	SUNW Equity	TER Equity	VRTS Equity	WCOM Equity	XLNX Equity	QQQ Index
2	1,000,000.00	500,000.00	500,000.00	1,000,000.00	800,000.00	
3						
4	57,031,300.00	28,781,250.00	49,125,000.00	34,119,000.00	66,100,000.00	
5	58,687,500.00	29,437,500.00	51,125,000.00	33,758,600.00	67,600,000.00	
6	57,687,500.00	29,906,250.00	54,906,250.00	33,518,400.00	68,050,000.00	
7	59,718,800.00	31,656,250.00	55,500,000.00	33,758,600.00	70,400,000.00	
8	61,187,500.00	33,437,500.00	53,562,500.00	33,218,000.00	70,150,000.00	
9	61,031,300.00	32,156,250.00	54,437,500.00	33,758,600.00	69,450,000.00	
10	61,093,800.00	31,781,250.00	55,750,000.00	32,977,700.00	70,150,000.00	
11	63,343,800.00	33,625,000.00	57,000,000.00	33,218,000.00	72,700,000.00	
12	63,875,000.00	34,562,500.00	57,843,750.00	33,578,400.00	72,800,000.00	
13	62,375,000.00	34,031,250.00	58,468,750.00	34,659,700.00	73,250,000.00	
14	63,906,300.00	33,656,250.00	59,375,000.00	35,740,900.00	71,450,000.00	
15	63,562,500.00	33,718,750.00	59,312,500.00	35,200,300.00	70,412,480.00	
16	63,562,500.00	32,218,750.00	56,656,250.00	34,960,000.00	70,000,000.00	
17	63,468,800.00	32,416,050.00	60,281,250.00	35,080,100.00	71,100,000.00	
18	64,312,500.00	31,968,750.00	60,875,000.00	35,500,600.00	73,500,000.00	
19	62,531,300.00	31,875,000.00	60,937,500.00	32,437,100.00	71,250,000.00	
20	58,812,500.00	29,656,250.00	59,250,000.00	30,274,600.00	65,550,000.00	
21	61,968,800.00	30,939,450.00	61,562,500.00	29,373,600.00	70,050,000.00	
22	60,375,000.00	28,500,000.00	58,625,000.00	28,772,900.00	68,200,000.00	
23	57,625,000.00	28,593,750.00	56,031,250.00	28,833,000.00	68,100,000.00	
24	57,156,300.00	26,781,250.00	56,281,250.00	28,833,000.00	64,850,000.00	
25	59,093,800.00	25,718,750.00	60,437,500.00	29,193,400.00	67,450,000.00	
26	58,750,000.00	25,750,000.00	61,593,750.00	28,893,100.00	66,850,000.00	
27	56,531,300.00	25,937,500.00	61,304,700.00	28,292,400.00	64,650,000.00	
28	57,625,000.00	23,937,500.00	60,687,500.00	27,571,600.00	61,400,000.00	
29	58,843,800.00	25,625,000.00	65,000,000.00	27,331,300.00	67,600,000.00	
30	59,843,800.00	24,607,450.00	68,468,750.00	26,250,000.00	69,500,000.00	
31	58,218,800.00	18,250,000.00	68,062,500.00	25,589,300.00	67,900,000.00	
32	59,031,300.00	19,500,000.00	71,882,800.00	25,469,100.00	67,650,000.00	
33	59,000,000.00	19,500,000.00	67,812,500.00	25,108,700.00	62,150,000.00	
34	58,750,000.00	19,343,750.00	69,562,500.00	24,508,000.00	64,300,000.00	
35	58,968,800.00	18,593,750.00	70,625,000.00	25,048,700.00	63,750,000.00	
36	61,812,500.00	19,125,000.00	74,000,000.00	27,871,900.00	70,200,000.00	
37	58,375,000.00	17,500,000.00	71,000,000.00	29,193,400.00	68,500,000.00	
38	56,781,300.00	16,718,750.00	69,937,500.00	28,292,400.00	69,700,000.00	
39	54,187,500.00	16,281,250.00	65,218,750.00	28,712,900.00	67,800,000.00	
40	55,726,600.00	17,000,000.00	68,500,000.00	27,091,000.00	71,700,000.00	



## Prices

	A	B	C	D	E	F	G
41	38	10/5/2000	74.2500	63.8750	53.1250	89.1250	61.5000
42	39	10/6/2000	73.8125	63.5625	54.1875	92.0000	59.1300
43	40	10/9/2000	74.8438	63.6250	55.7500	92.7188	57.1000
44	41	10/10/2000	71.8438	64.8125	49.0625	89.3438	57.2400
45	42	10/11/2000	75.3438	64.0625	51.5625	83.8672	54.5000
46	43	10/12/2000	65.4063	65.0000	48.0625	82.0000	51.0000
47	44	10/13/2000	72.5625	63.1875	53.5000	90.8750	53.0000
48	45	10/16/2000	70.9063	60.3125	48.7500	90.4063	52.6100
49	46	10/22/2000	66.4688	59.9375	44.5000	88.8125	43.6000
50	47	10/18/2000	64.5313	60.5000	42.0625	83.9063	46.9100
51	48	10/19/2000	68.7813	61.3125	50.5000	97.3125	45.4400
52	49	10/20/2000	70.0313	62.6250	50.5000	103.1563	46.5700
53	50	10/23/2000	70.2813	61.4375	53.4375	104.5938	47.9400
54	51	10/24/2000	67.5938	63.5625	49.4375	99.1563	48.0200
55	52	10/25/2000	67.5000	64.3125	48.7500	74.0000	47.0200
56	53	10/26/2000	72.4375	63.5000	53.0625	69.2500	46.7000
57	54	10/27/2000	74.8125	63.0625	48.1250	70.6875	48.0000
58	55	10/30/2000	69.6250	66.0000	49.6250	64.0625	47.7500
59	56	10/31/2000	76.0625	65.3125	53.1250	76.4375	50.5000
60	57	11/1/2000	77.2500	64.7500	51.2500	73.6250	52.0000
61	58	11/2/2000	80.8125	65.5000	52.0000	67.8750	54.0000
62	59	11/3/2000	80.6875	64.1875	49.4375	72.0000	53.4300
63	60	11/6/2000	83.2500	65.1250	49.3125	76.3750	55.8600
64	61	11/7/2000	82.2500	64.8750	46.8750	68.8750	57.6100
65	62	11/8/2000	80.2500	64.8125	43.4375	61.3125	56.3000
66	63	11/9/2000	83.1875	65.0000	43.3750	63.1875	52.6800
67	64	11/10/2000	77.4375	66.4375	40.9375	61.5000	50.5000
68	65	11/13/2000	72.0625	65.0625	40.2500	62.6250	49.0700
69	66	11/14/2000	81.6250	66.9375	41.4375	68.6719	49.9000
70	67	11/15/2000	81.1875	67.4375	42.7500	71.0000	49.4400
71	68	11/16/2000	81.5000	67.0625	41.6250	60.9375	48.8500
72	69	11/17/2000	82.7500	67.8125	41.1250	55.6875	49.5600
73	70	11/20/2000	76.0000	68.8750	41.1250	54.5625	47.0900
74	71	11/21/2000	80.0000	68.3750	42.3125	54.1875	43.0000
75	72	11/22/2000	72.3125	68.3750	42.2500	52.8125	41.0800
76	73	11/24/2000	75.8750	68.6875	46.6875	57.5000	42.9000
77	74	11/27/2000	68.8125	67.8125	44.1250	51.1250	43.9700
78	75	11/28/2000	64.7813	67.6250	41.0625	49.1875	40.5600
79	76	11/29/2000	64.3125	66.4375	42.9375	51.0000	43.3600
80	77	11/30/2000	63.3750	66.0000	40.4375	48.4375	40.6100

## Prices

	H	I	J	K	L	M	N
41	75.8125	55.5625	112.7500	45.8750	57.5625	25.1875	63.8750
42	74.8750	57.0625	106.8438	51.5000	56.1875	25.3125	59.4375
43	77.1250	53.8125	112.9375	50.1250	53.6875	25.6250	60.9375
44	73.7500	51.5000	113.3750	49.7500	51.1250	24.2500	57.9375
45	74.8125	50.2500	114.2500	48.2500	51.1875	23.0000	53.0000
46	74.0000	50.3750	114.5000	47.0625	49.8125	23.1875	51.1250
47	77.2500	52.1875	119.8125	49.1875	56.0625	27.3125	55.8750
48	81.5000	50.6875	124.2500	45.8750	54.5000	25.3594	59.6250
49	82.8750	50.6250	122.2188	46.1875	54.5625	24.3750	52.7500
50	80.6875	52.9375	119.2500	49.7500	52.2500	26.2500	53.3750
51	81.2500	53.2500	122.2188	50.6875	58.2500	28.8125	57.1875
52	85.5625	54.3125	126.2188	54.5625	57.3125	28.4375	58.0625
53	86.1875	59.0625	133.3125	56.0000	55.8750	27.5000	59.5625
54	83.5000	57.1250	130.0000	55.4375	54.8750	26.8125	54.0625
55	82.8125	56.0625	120.5000	52.0000	50.6250	25.8750	54.0625
56	74.5000	59.8750	108.0000	54.9375	53.5625	27.7500	52.5000
57	72.6250	57.8750	113.2500	55.8750	50.6875	27.9375	51.3750
58	62.1250	57.8750	103.9609	55.9375	48.0625	28.8125	49.2500
59	71.7500	60.1875	113.6875	60.0625	53.8750	29.5000	51.5000
60	78.7500	59.8750	114.5000	60.5000	52.1250	30.4375	54.0156
61	80.4375	62.3750	121.5000	60.0625	55.7500	31.8125	57.4375
62	80.9375	62.6250	126.8750	59.3750	56.7500	32.5625	54.8125
63	77.1250	58.9375	127.7188	59.0000	55.1250	31.5000	54.3750
64	83.0625	59.2500	128.2500	57.6250	56.7500	32.5625	56.6875
65	74.3125	57.0625	115.5000	56.1875	52.1250	30.3125	51.6250
66	74.3750	58.6875	111.4453	53.2500	53.2500	28.3750	48.6875
67	69.3750	57.4375	107.2188	53.0625	50.0625	23.0000	46.0625
68	63.0000	52.0000	103.6250	53.0000	50.3750	24.1250	42.8750
69	70.9375	55.5625	109.0000	53.8750	53.1250	25.8125	47.6875
70	74.9375	57.1250	110.9688	52.6250	53.5625	25.1875	45.8125
71	70.0625	55.1250	113.2500	51.3750	51.0625	24.9375	42.8750
72	62.8125	56.5625	110.0938	50.3750	52.7500	24.9375	43.4375
73	61.2500	54.8750	94.2188	48.3125	51.2500	23.3750	34.5000
74	61.0000	55.0000	94.7500	45.7500	53.6875	23.6250	31.5625
75	51.0625	53.4375	90.7500	47.5625	50.5625	23.0000	32.8750
76	55.7500	56.7031	94.7188	48.0625	52.6875	24.3750	36.9375
77	60.0625	58.6875	94.5000	47.9375	51.2500	24.4375	38.1875
78	52.8750	57.4063	80.5000	48.3750	51.0000	22.4375	36.0313
79	51.0000	57.1875	76.8750	47.8125	51.6875	21.8125	37.1250
80	58.5625	54.7500	83.9688	50.5000	47.8750	19.2500	34.3125

## Prices

	O	P	Q	R	S	T
41	40.9375	39.5000	34.1563	35.5000	51.1250	54.8750
42	40.8125	37.6875	33.8125	33.0625	51.4375	53.7500
43	39.7500	37.0000	33.3750	34.0000	50.4375	53.4063
44	36.8750	35.0000	32.3125	34.3750	49.1875	51.5938
45	37.7500	32.8750	31.1250	33.5000	47.1875	50.9375
46	35.5625	29.4375	31.5000	32.8750	45.2500	48.9688
47	36.3750	33.1250	35.6250	34.8125	46.6250	55.5000
48	33.6875	32.9375	34.5625	31.7500	47.9375	57.2813
49	29.0000	30.6875	33.6875	30.8125	47.3750	55.6875
50	28.5625	30.0000	33.5625	31.8750	43.8750	55.1563
51	34.6875	38.1250	36.3750	36.0000	44.9375	58.8438
52	34.8750	39.1875	35.2500	37.1875	45.5625	59.3438
53	36.3125	39.0625	34.0625	37.1875	45.3750	59.3750
54	33.5000	40.0000	35.8125	37.0000	47.6875	58.9063
55	30.1875	38.3125	34.3750	37.7500	48.7500	54.3125
56	31.6250	38.5625	34.0625	33.7500	48.8750	51.0000
57	30.2500	39.3750	34.1875	35.9375	50.0000	51.5938
58	32.6875	39.6875	31.6250	35.1250	50.0000	52.0000
59	34.7500	42.7500	33.0000	38.1250	48.6250	55.4375
60	35.6250	43.6875	31.3750	37.0000	45.6875	52.9375
61	35.3125	43.6875	29.5625	36.5625	46.3125	54.5313
62	35.7500	43.9375	30.3125	28.5000	47.2500	56.5313
63	34.1250	42.3125	27.9375	26.9375	45.7500	55.3438
64	35.9375	41.8750	26.5625	28.0000	45.5000	55.7188
65	34.6250	41.0625	24.8125	27.0000	45.8750	50.1563
66	32.5625	41.4375	27.1875	26.0625	44.1875	48.8125
67	30.1250	38.2500	25.4375	24.0625	39.7500	44.5938
68	32.3750	37.5625	24.7500	25.5000	41.5625	42.6563
69	33.3750	40.8125	28.3750	25.8750	42.1875	47.0000
70	35.0000	41.3125	28.8750	26.5000	42.1875	46.9688
71	33.1250	40.0000	27.3750	27.1250	42.2500	43.6250
72	33.7500	41.3125	28.8125	25.0000	41.8750	44.6563
73	35.5000	39.3750	24.7500	24.5625	40.1250	40.8125
74	34.5000	40.7500	23.8750	23.8750	41.0625	42.5625
75	35.9375	39.6875	22.3125	23.8750	39.0000	40.0000
76	40.8750	42.0625	24.1250	25.2500	39.8125	42.4375
77	37.1250	43.6875	23.1250	25.7500	40.6875	44.0938
78	33.5000	42.0000	22.6563	24.8125	41.1250	40.6250
79	34.3125	42.3750	22.8750	23.6250	39.2500	39.8750
80	31.5000	42.7500	26.5000	22.6875	37.7500	38.0313

## Prices

	U	V	W	X	Z	AB	AC
41	32.8750	138.3125	24.9285	87.0625	85.8750	313.0000	57.19
42	33.1875	130.9375	24.2077	81.9375	83.0000	312.0000	56.41
43	32.6875	132.5000	24.9285	79.1250	82.6250	309.0000	56.42
44	31.3125	131.9375	25.5292	62.4375	78.3125	308.0000	54.21
45	32.6875	138.0625	24.7483	63.3750	77.0625	307.0000	53.70
46	32.3750	121.6406	22.2254	66.5000	75.1250	306.0000	51.57
47	37.4375	140.8125	23.3667	74.7500	81.2500	305.0000	55.70
48	34.4375	150.2656	22.1053	71.4375	82.0000	302.0000	55.13
49	25.0000	149.2500	20.9640	64.5000	78.2500	296.0000	52.74
50	24.3125	152.9375	23.0063	66.6250	78.0000	300.0000	52.45
51	27.5000	160.3750	25.7094	74.4375	85.0625	299.0000	56.28
52	28.1875	166.8125	24.6883	74.2500	86.3125	298.0000	57.48
53	30.5000	157.3750	25.7094	75.6250	86.1875	295.0000	58.14
54	29.2500	144.5625	25.8896	69.7500	82.4375	294.0000	56.66
55	27.7500	132.0000	24.2678	61.7500	77.9375	293.0000	53.70
56	31.0000	131.6875	20.9039	65.9375	79.8750	292.0000	53.43
57	28.0625	140.7500	21.2043	64.9375	79.7188	291.0000	53.72
58	29.0625	132.1250	23.9074	66.8750	76.7656	288.0000	52.39
59	31.2500	141.0156	22.8261	72.4375	81.7031	287.0000	55.87
60	31.0000	143.1250	18.2008	67.4375	81.0000	286.0000	55.43
61	32.6875	153.6875	16.8793	69.7500	82.0000	285.0000	56.70
62	32.1250	153.9375	17.2998	71.4375	83.0625	284.0000	56.81
63	32.5000	154.5000	17.3599	72.8750	82.4375	281.0000	56.44
64	31.1250	159.9375	17.1797	66.6875	82.1250	280.0000	56.35
65	29.4375	144.5000	16.2786	58.3125	75.7031	279.0000	52.96
66	29.9375	139.2500	15.4977	62.9375	75.6875	278.0000	52.46
67	29.0000	125.8125	14.8970	59.7500	71.7500	277.0000	49.34
68	33.8750	112.7500	15.7380	63.3750	70.0625	274.0000	48.37
69	35.1250	124.0625	16.3988	67.1250	75.8438	273.0000	51.64
70	35.7500	129.6875	15.7380	69.8750	77.3750	272.0000	52.29
71	33.4375	121.0000	15.3776	66.0000	72.8750	271.0000	50.61
72	33.5000	110.1250	15.1373	63.2500	72.8281	270.0000	49.91
73	36.5625	107.2500	14.4766	61.0625	69.8594	267.0000	47.34
74	33.1250	97.3125	14.4766	55.0000	69.7500	266.0000	46.95
75	33.1250	93.3750	13.9359	52.3125	66.6250	265.0000	45.04
76	38.5000	100.8750	15.1974	56.8125	70.4375	263.0000	47.79
77	34.5000	106.0000	15.4977	46.5000	69.5625	260.0000	46.87
78	30.7500	99.0313	14.8069	45.9063	65.4531	259.0000	44.37
79	31.6875	88.0000	15.5578	43.0000	62.9375	258.0000	43.85
80	30.0625	97.5625	14.3564	39.0000	62.9844	257.0000	43.38

## Prices

	AD	AE	AF	AG	AH	AI
41	1,263,894,175	111,375,000.00	63,875,000.00	58,437,500.00	80,212,500.00	61,500,000.00
42	1,246,743,995	110,718,750.00	63,562,500.00	59,606,250.00	82,800,000.00	59,130,000.00
43	1,246,919,295	112,265,700.00	63,625,000.00	61,325,000.00	83,446,920.00	57,100,000.00
44	1,198,038,120	107,765,700.00	64,812,500.00	53,968,750.00	80,409,420.00	57,240,000.00
45	1,186,791,355	113,015,700.00	64,062,500.00	56,718,750.00	75,480,480.00	54,500,000.00
46	1,139,773,950	98,109,450.00	65,000,000.00	52,868,750.00	73,800,000.00	51,000,000.00
47	1,231,022,950	108,843,750.00	63,187,500.00	58,850,000.00	81,787,500.00	53,000,000.00
48	1,218,412,370	106,359,450.00	60,312,500.00	53,625,000.00	81,365,670.00	52,610,000.00
49	1,165,601,620	99,703,200.00	59,937,500.00	48,950,000.00	79,931,250.00	43,600,000.00
50	1,159,166,470	96,796,950.00	60,500,000.00	46,268,750.00	75,515,670.00	46,910,000.00
51	1,243,840,195	103,171,950.00	61,312,500.00	55,550,000.00	87,581,250.00	45,440,000.00
52	1,270,330,390	105,046,950.00	62,625,000.00	55,550,000.00	92,840,670.00	46,570,000.00
53	1,284,912,020	105,421,950.00	61,437,500.00	58,781,250.00	94,134,420.00	47,940,000.00
54	1,252,125,395	101,390,700.00	63,562,500.00	54,381,250.00	89,240,670.00	48,020,000.00
55	1,186,719,050	101,250,000.00	64,312,500.00	53,625,000.00	66,600,000.00	47,020,000.00
56	1,180,778,900	108,656,250.00	63,500,000.00	58,368,750.00	62,325,000.00	46,700,000.00
57	1,187,288,725	112,218,750.00	63,062,500.00	52,937,500.00	63,618,750.00	48,000,000.00
58	1,157,734,710	104,437,500.00	66,000,000.00	54,587,500.00	57,656,250.00	47,750,000.00
59	1,234,724,525	114,093,750.00	65,312,500.00	58,437,500.00	68,793,750.00	50,500,000.00
60	1,224,938,280	115,875,000.00	64,750,000.00	56,375,000.00	66,262,500.00	52,000,000.00
61	1,253,151,225	121,218,750.00	65,500,000.00	57,200,000.00	61,087,500.00	54,000,000.00
62	1,255,573,600	121,031,250.00	64,187,500.00	54,381,250.00	64,800,000.00	53,430,000.00
63	1,247,216,870	124,875,000.00	65,125,000.00	54,243,750.00	68,737,500.00	55,860,000.00
64	1,245,246,000	123,375,000.00	64,875,000.00	51,562,500.00	61,987,500.00	57,610,000.00
65	1,170,394,275	120,375,000.00	64,812,500.00	47,781,250.00	55,181,250.00	56,300,000.00
66	1,159,340,970	124,781,250.00	65,000,000.00	47,712,500.00	56,868,750.00	52,680,000.00
67	1,090,487,720	116,156,250.00	66,437,500.00	45,031,250.00	55,350,000.00	50,500,000.00
68	1,069,001,800	108,093,750.00	65,062,500.00	44,275,000.00	56,362,500.00	49,070,000.00
69	1,141,322,260	122,437,500.00	66,937,500.00	45,581,250.00	61,804,710.00	49,900,000.00
70	1,155,653,095	121,781,250.00	67,437,500.00	47,025,000.00	63,900,000.00	49,440,000.00
71	1,118,449,475	122,250,000.00	67,062,500.00	45,787,500.00	54,843,750.00	48,850,000.00
72	1,103,056,770	124,125,000.00	67,812,500.00	45,237,500.00	50,118,750.00	49,560,000.00
73	1,046,222,895	114,000,000.00	68,875,000.00	45,237,500.00	49,106,250.00	47,090,000.00
74	1,037,529,725	120,000,000.00	68,375,000.00	46,543,750.00	48,768,750.00	43,000,000.00
75	995,465,900	108,468,750.00	68,375,000.00	46,475,000.00	47,531,250.00	41,080,000.00
76	1,056,227,110	113,812,500.00	68,687,500.00	51,356,250.00	51,750,000.00	42,900,000.00
77	1,035,889,625	103,218,750.00	67,812,500.00	48,537,500.00	46,012,500.00	43,970,000.00
78	980,551,550	97,171,950.00	67,625,000.00	45,168,750.00	44,268,750.00	40,560,000.00
79	969,092,800	96,468,750.00	66,437,500.00	47,231,250.00	45,900,000.00	43,360,000.00
80	958,632,120	95,062,500.00	66,000,000.00	44,481,250.00	43,593,750.00	40,610,000.00

## Prices

	AJ	AK	AL	AM	AN	AO
41	68,231,250.00	50,006,250.00	101,475,000.00	43,581,250.00	48,928,125.00	37,781,250.00
42	67,387,500.00	51,356,250.00	96,159,420.00	48,925,000.00	47,759,375.00	37,968,750.00
43	69,412,500.00	48,431,250.00	101,643,750.00	47,618,750.00	45,634,375.00	38,437,500.00
44	66,375,000.00	46,350,000.00	102,037,500.00	47,262,500.00	43,456,250.00	36,375,000.00
45	67,331,250.00	45,225,000.00	102,825,000.00	45,837,500.00	43,509,375.00	34,500,000.00
46	66,600,000.00	45,337,500.00	103,050,000.00	44,709,375.00	42,340,625.00	34,781,250.00
47	69,525,000.00	46,968,750.00	107,831,250.00	46,728,125.00	47,653,125.00	40,968,750.00
48	73,350,000.00	45,618,750.00	111,825,000.00	43,581,250.00	46,325,000.00	38,039,100.00
49	74,587,500.00	45,562,500.00	109,996,920.00	43,878,125.00	46,378,125.00	36,562,500.00
50	72,618,750.00	47,643,750.00	107,325,000.00	47,262,500.00	44,412,500.00	39,375,000.00
51	73,125,000.00	47,925,000.00	109,996,920.00	48,153,125.00	49,512,500.00	43,218,750.00
52	77,006,250.00	48,881,250.00	113,596,920.00	51,834,375.00	48,715,625.00	42,656,250.00
53	77,568,750.00	53,156,250.00	119,981,250.00	53,200,000.00	47,493,750.00	41,250,000.00
54	75,150,000.00	51,412,500.00	117,000,000.00	52,665,625.00	46,643,750.00	40,218,750.00
55	74,531,250.00	50,456,250.00	108,450,000.00	49,400,000.00	43,031,250.00	38,812,500.00
56	67,050,000.00	53,887,500.00	97,200,000.00	52,190,625.00	45,528,125.00	41,625,000.00
57	65,362,500.00	52,087,500.00	101,925,000.00	53,081,250.00	43,084,375.00	41,906,250.00
58	55,912,500.00	52,087,500.00	93,564,810.00	53,140,625.00	40,853,125.00	43,218,750.00
59	64,575,000.00	54,168,750.00	102,318,750.00	57,059,375.00	45,793,750.00	44,250,000.00
60	70,875,000.00	53,887,500.00	103,050,000.00	57,475,000.00	44,306,250.00	45,656,250.00
61	72,393,750.00	56,137,500.00	109,350,000.00	57,059,375.00	47,387,500.00	47,718,750.00
62	72,843,750.00	56,362,500.00	114,187,500.00	56,406,250.00	48,237,500.00	48,843,750.00
63	69,412,500.00	53,043,750.00	114,946,920.00	56,050,000.00	46,856,250.00	47,250,000.00
64	74,756,250.00	53,325,000.00	115,425,000.00	54,743,750.00	48,237,500.00	48,843,750.00
65	66,881,250.00	51,356,250.00	103,950,000.00	53,378,125.00	44,306,250.00	45,468,750.00
66	66,937,500.00	52,818,750.00	100,300,770.00	50,587,500.00	45,262,500.00	42,562,500.00
67	62,437,500.00	51,693,750.00	96,496,920.00	50,409,375.00	42,553,125.00	34,500,000.00
68	56,700,000.00	46,800,000.00	93,262,500.00	50,350,000.00	42,818,750.00	36,187,500.00
69	63,843,750.00	50,006,250.00	98,100,000.00	51,181,250.00	45,156,250.00	38,718,750.00
70	67,443,750.00	51,412,500.00	99,871,920.00	49,993,750.00	45,528,125.00	37,781,250.00
71	63,056,250.00	49,612,500.00	101,925,000.00	48,806,250.00	43,403,125.00	37,406,250.00
72	56,531,250.00	50,906,250.00	99,084,420.00	47,856,250.00	44,837,500.00	37,406,250.00
73	55,125,000.00	49,387,500.00	84,796,920.00	45,896,875.00	43,562,500.00	35,062,500.00
74	54,900,000.00	49,500,000.00	85,275,000.00	43,462,500.00	45,634,375.00	35,437,500.00
75	45,956,250.00	48,093,750.00	81,675,000.00	45,184,375.00	42,978,125.00	34,500,000.00
76	50,175,000.00	51,032,790.00	85,246,920.00	45,659,375.00	44,784,375.00	36,562,500.00
77	54,056,250.00	52,818,750.00	85,050,000.00	45,540,625.00	43,562,500.00	36,656,250.00
78	47,587,500.00	51,665,670.00	72,450,000.00	45,956,250.00	43,350,000.00	33,656,250.00
79	45,900,000.00	51,468,750.00	69,187,500.00	45,421,875.00	43,934,375.00	32,718,750.00
80	52,706,250.00	49,275,000.00	75,571,920.00	47,975,000.00	40,693,750.00	28,875,000.00

## Prices

	AP	AQ	AR	AS	AT	AU
41	51,100,000.00	40,937,500.00	39,500,000.00	34,156,300.00	35,500,000.00	102,250,000.00
42	47,550,000.00	40,812,500.00	37,687,500.00	33,812,500.00	33,062,500.00	102,875,000.00
43	48,750,000.00	39,750,000.00	37,000,000.00	33,375,000.00	34,000,000.00	100,875,000.00
44	46,350,000.00	36,875,000.00	35,000,000.00	32,312,500.00	34,375,000.00	98,375,000.00
45	42,400,000.00	37,750,000.00	32,875,000.00	31,125,000.00	33,500,000.00	94,375,000.00
46	40,900,000.00	35,562,500.00	29,437,500.00	31,500,000.00	32,875,000.00	90,500,000.00
47	44,700,000.00	36,375,000.00	33,125,000.00	35,625,000.00	34,812,500.00	93,250,000.00
48	47,700,000.00	33,687,500.00	32,937,500.00	34,562,500.00	31,750,000.00	95,875,000.00
49	42,200,000.00	29,000,000.00	30,687,500.00	33,687,500.00	30,812,500.00	94,750,000.00
50	42,700,000.00	28,562,500.00	30,000,000.00	33,562,500.00	31,875,000.00	87,750,000.00
51	45,750,000.00	34,687,500.00	38,125,000.00	36,375,000.00	36,000,000.00	89,875,000.00
52	46,450,000.00	34,875,000.00	39,187,500.00	35,250,000.00	37,187,500.00	91,125,000.00
53	47,650,000.00	36,312,500.00	39,062,500.00	34,062,500.00	37,187,500.00	90,750,000.00
54	43,250,000.00	33,500,000.00	40,000,000.00	35,812,500.00	37,000,000.00	95,375,000.00
55	43,250,000.00	30,187,500.00	38,312,500.00	34,375,000.00	37,750,000.00	97,500,000.00
56	42,000,000.00	31,625,000.00	38,562,500.00	34,062,500.00	33,750,000.00	97,750,000.00
57	41,100,000.00	30,250,000.00	39,375,000.00	34,187,500.00	35,937,500.00	100,000,000.00
58	39,400,000.00	32,687,500.00	39,687,500.00	31,625,000.00	35,125,000.00	100,000,000.00
59	41,200,000.00	34,750,000.00	42,750,000.00	33,000,000.00	38,125,000.00	97,250,000.00
60	43,212,480.00	35,625,000.00	43,687,500.00	31,375,000.00	37,000,000.00	91,375,000.00
61	45,950,000.00	35,312,500.00	43,687,500.00	29,562,500.00	36,562,500.00	92,625,000.00
62	43,850,000.00	35,750,000.00	43,937,500.00	30,312,500.00	28,500,000.00	94,500,000.00
63	43,500,000.00	34,125,000.00	42,312,500.00	27,937,500.00	26,937,500.00	91,500,000.00
64	45,350,000.00	35,937,500.00	41,875,000.00	26,562,500.00	28,000,000.00	91,000,000.00
65	41,300,000.00	34,625,000.00	41,062,500.00	24,812,500.00	27,000,000.00	91,750,000.00
66	38,950,000.00	32,562,500.00	41,437,500.00	27,187,500.00	26,062,500.00	88,375,000.00
67	36,850,000.00	30,125,000.00	38,250,000.00	25,437,500.00	24,062,500.00	79,500,000.00
68	34,300,000.00	32,375,000.00	37,562,500.00	24,750,000.00	25,500,000.00	83,125,000.00
69	38,150,000.00	33,375,000.00	40,812,500.00	28,375,000.00	25,875,000.00	84,375,000.00
70	36,650,000.00	35,000,000.00	41,312,500.00	28,875,000.00	26,500,000.00	84,375,000.00
71	34,300,000.00	33,125,000.00	40,000,000.00	27,375,000.00	27,125,000.00	84,500,000.00
72	34,750,000.00	33,750,000.00	41,312,500.00	28,812,500.00	25,000,000.00	83,750,000.00
73	27,600,000.00	35,500,000.00	39,375,000.00	24,750,000.00	24,562,500.00	80,250,000.00
74	25,250,000.00	34,500,000.00	40,750,000.00	23,875,000.00	23,875,000.00	82,125,000.00
75	26,300,000.00	35,937,500.00	39,687,500.00	22,312,500.00	23,875,000.00	78,000,000.00
76	29,550,000.00	40,875,000.00	42,062,500.00	24,125,000.00	25,250,000.00	79,625,000.00
77	30,550,000.00	37,125,000.00	43,687,500.00	23,125,000.00	25,750,000.00	81,375,000.00
78	28,825,040.00	33,500,000.00	42,000,000.00	22,656,300.00	24,812,500.00	82,250,000.00
79	29,700,000.00	34,312,500.00	42,375,000.00	22,875,000.00	23,625,000.00	78,500,000.00
80	27,450,000.00	31,500,000.00	42,750,000.00	26,500,000.00	22,687,500.00	75,500,000.00

## Prices

	AV	AW	AX	AY	AZ	BB
41	54,875,000.00	16,437,500.00	69,156,250.00	24,928,500.00	69,650,000.00	
42	53,750,000.00	16,593,750.00	65,468,750.00	24,207,700.00	65,550,000.00	
43	53,406,300.00	16,343,750.00	66,250,000.00	24,928,500.00	63,300,000.00	
44	51,593,800.00	15,656,250.00	65,968,750.00	25,529,200.00	49,950,000.00	
45	50,937,500.00	16,343,750.00	69,031,250.00	24,748,300.00	50,700,000.00	
46	48,968,800.00	16,187,500.00	60,820,300.00	22,225,400.00	53,200,000.00	
47	55,500,000.00	18,718,750.00	70,406,250.00	23,366,700.00	59,800,000.00	
48	57,281,300.00	17,218,750.00	75,132,800.00	22,105,300.00	57,150,000.00	
49	55,687,500.00	12,500,000.00	74,625,000.00	20,964,000.00	51,600,000.00	
50	55,156,300.00	12,156,250.00	76,468,750.00	23,006,300.00	53,300,000.00	
51	58,843,800.00	13,750,000.00	80,187,500.00	25,709,400.00	59,550,000.00	
52	59,343,800.00	14,093,750.00	83,406,250.00	24,688,300.00	59,400,000.00	
53	59,375,000.00	15,250,000.00	78,687,500.00	25,709,400.00	60,500,000.00	
54	58,906,300.00	14,625,000.00	72,281,250.00	25,889,600.00	55,800,000.00	
55	54,312,500.00	13,875,000.00	66,000,000.00	24,267,800.00	49,400,000.00	
56	51,000,000.00	15,500,000.00	65,843,750.00	20,903,900.00	52,750,000.00	
57	51,593,800.00	14,031,250.00	70,375,000.00	21,204,300.00	51,950,000.00	
58	52,000,000.00	14,531,250.00	66,062,500.00	23,907,400.00	53,500,000.00	
59	55,437,500.00	15,625,000.00	70,507,800.00	22,826,100.00	57,950,000.00	
60	52,937,500.00	15,500,000.00	71,562,500.00	18,200,800.00	53,950,000.00	
61	54,531,300.00	16,343,750.00	76,843,750.00	16,879,300.00	55,800,000.00	
62	56,531,300.00	16,062,500.00	76,968,750.00	17,299,800.00	57,150,000.00	
63	55,343,800.00	16,250,000.00	77,250,000.00	17,359,900.00	58,300,000.00	
64	55,718,800.00	15,562,500.00	79,968,750.00	17,179,700.00	53,350,000.00	
65	50,156,300.00	14,718,750.00	72,250,000.00	16,278,600.00	46,650,000.00	
66	48,812,500.00	14,968,750.00	69,625,000.00	15,497,700.00	50,350,000.00	
67	44,593,800.00	14,500,000.00	62,906,250.00	14,897,000.00	47,800,000.00	
68	42,656,300.00	16,937,500.00	56,375,000.00	15,738,000.00	50,700,000.00	
69	47,000,000.00	17,562,500.00	62,031,250.00	16,398,800.00	53,700,000.00	
70	46,968,800.00	17,875,000.00	64,843,750.00	15,738,000.00	55,900,000.00	
71	43,625,000.00	16,718,750.00	60,500,000.00	15,377,600.00	52,800,000.00	
72	44,656,300.00	16,750,000.00	55,062,500.00	15,137,300.00	50,600,000.00	
73	40,812,500.00	18,281,250.00	53,625,000.00	14,476,600.00	48,850,000.00	
74	42,562,500.00	16,562,500.00	48,656,250.00	14,476,600.00	44,000,000.00	
75	40,000,000.00	16,562,500.00	46,687,500.00	13,935,900.00	41,850,000.00	
76	42,437,500.00	19,250,000.00	50,437,500.00	15,197,400.00	45,450,000.00	
77	44,093,800.00	17,250,000.00	53,000,000.00	15,497,700.00	37,200,000.00	
78	40,625,000.00	15,375,000.00	49,515,650.00	14,806,900.00	36,725,040.00	
79	39,875,000.00	15,843,750.00	44,000,000.00	15,557,800.00	34,400,000.00	
80	38,031,300.00	15,031,250.00	48,781,250.00	14,356,400.00	31,200,000.00	



## Prices

	A	B	C	D	E	F	G
81	78	12/1/2000	67.3125	64.9375	38.5625	52.7500	41.5100
82	79	12/4/2000	68.0625	65.1875	38.5000	50.4375	41.0500
83	80	12/5/2000	76.6875	65.3125	44.1250	62.2500	44.0800
84	81	12/6/2000	67.1875	66.1875	40.5625	61.8125	44.6100
85	82	12/7/2000	63.0000	65.0625	40.0000	63.6250	43.5500
86	83	12/8/2000	68.3750	63.0000	44.1875	69.8125	46.9000
87	84	12/11/2000	74.1250	61.2500	50.9375	74.5000	48.4900
88	85	12/12/2000	70.6875	61.8125	45.5000	69.0000	48.6500
89	86	12/13/2000	66.1875	62.2500	42.6875	66.8125	48.4500
90	87	12/14/2000	57.3125	63.3125	40.3750	66.0000	50.0000
91	88	12/15/2000	62.4375	59.8750	39.5000	67.5000	48.9600
92	89	12/18/2000	63.5625	59.8125	39.7500	65.5000	42.2400
93	90	12/19/2000	64.0000	59.5625	39.0000	61.5625	40.7600
94	91	12/20/2000	57.2500	58.9375	37.8125	56.1250	37.2500
95	92	12/21/2000	59.8125	59.0000	35.3750	53.8750	37.6600
96	93	12/22/2000	65.6875	59.5000	38.6250	65.6875	38.2800
97	94	12/26/2000	65.9375	61.1875	38.0000	65.5625	38.5000
98	95	12/27/2000	65.5000	62.8125	39.5625	73.6094	35.7500
99	96	12/28/2000	61.6250	63.3750	39.4375	77.4375	35.2500
100	97	12/29/2000	58.1875	63.3125	38.1875	75.0469	34.8000
101	98	1/2/2001	46.7344	62.0625	39.5000	63.7500	32.3900
102	99	1/3/2001	57.9375	60.7500	49.6250	74.7500	37.5000
103	100	1/4/2001	53.7500	56.6875	44.3750	73.3750	42.1800
104	101	1/5/2001	51.5000	54.8750	42.6875	63.5000	41.2900
105	102	1/8/2001	49.5625	58.8750	45.7500	64.1250	40.0300
106	103	1/9/2001	49.8125	60.6875	43.5000	63.2500	42.8500
107	104	1/10/2001	45.7500	60.8750	44.7500	68.4375	44.8900
108	105	1/11/2001	48.0625	60.5625	46.3750	70.8125	47.2300
109	106	1/12/2001	50.4375	61.8125	46.3750	71.6250	46.4700
110	107	1/16/2001	50.8750	62.0000	44.4375	70.3750	46.7000
111	108	1/17/2001	53.5000	60.3125	48.1875	80.3750	48.7900
112	109	1/18/2001	56.0000	60.0625	50.0625	84.3750	49.7700
113	110	1/19/2001	58.2500	60.0000	49.9375	86.5000	53.8000
114	111	1/22/2001	59.9375	58.6875	48.9375	82.7500	53.8400
115	112	1/23/2001	59.4375	59.5000	48.2500	84.8125	54.1500
116	113	1/24/2001	60.1250	60.1250	49.6250	87.1250	55.7500
117	114	1/25/2001	57.0625	59.9375	48.7500	78.0000	55.7700
118	115	1/26/2001	58.0625	59.4375	47.8750	76.1875	54.5900
119	116	1/29/2001	54.0000	60.5000	50.1875	78.3750	55.0000
120	117	1/30/2001	52.7500	60.1300	52.4375	78.0625	54.3100

1500

Prices

	H	I	J	K	L	M	N
81	63.6250	53.1875	83.9375	51.1250	48.5000	18.4375	34.7500
82	58.7500	53.4375	80.9063	50.4375	45.8125	18.8125	32.3125
83	73.9844	56.8750	94.9141	52.7500	52.1250	20.2500	39.5000
84	74.1250	56.4375	95.5000	52.9375	51.4375	18.0000	36.3125
85	71.0000	57.5625	100.5000	51.8750	49.9375	17.4375	35.0000
86	77.9375	58.8125	109.8750	53.3750	52.3750	18.5625	38.6250
87	76.6250	59.6875	112.5625	52.0625	54.8125	20.0625	43.5000
88	70.1250	56.4375	108.8750	52.7500	54.3750	21.7031	40.9375
89	66.2500	55.6875	104.8438	53.6875	51.1250	20.4375	39.2500
90	63.7500	54.5000	101.7813	52.6250	50.9375	19.9375	37.0000
91	71.3750	51.5000	100.0625	53.1875	48.1719	19.8750	38.0000
92	73.3125	53.3125	92.9063	52.6875	42.9375	19.5000	38.3125
93	69.3750	54.6875	82.6250	51.2500	41.7500	18.2500	32.3125
94	56.5000	53.4375	73.6250	49.1875	36.5000	16.6250	27.9375
95	60.5000	64.2500	68.4375	49.0000	38.8750	17.1875	28.4375
96	72.2500	60.0625	85.0625	49.0625	41.5000	18.3750	35.0000
97	69.5625	60.7500	84.8125	48.4375	40.7500	17.5000	34.6875
98	74.6250	62.5000	88.8750	49.0625	40.7500	18.0000	35.2500
99	76.0000	61.4375	95.4844	48.9375	39.5625	17.9375	37.8125
100	67.3125	60.0625	91.8125	48.4375	38.2500	17.4375	33.0000
101	53.1250	55.7500	75.5000	47.6250	33.3125	17.5000	30.1875
102	67.8750	58.0000	88.2500	52.7500	41.3125	20.0000	39.3594
103	61.0000	55.3125	86.9375	58.6875	41.8750	19.1875	35.3750
104	53.6250	52.1250	79.9375	54.1875	36.6250	19.0000	30.5625
105	46.4375	52.5000	78.0000	52.0000	36.5469	19.1250	30.6250
106	49.1250	51.7500	81.8125	54.1875	37.1250	19.7500	33.3750
107	56.2500	51.3125	84.4375	55.0625	36.2500	21.3125	39.3125
108	61.1875	52.8125	89.8125	58.8125	39.1250	22.8125	40.9375
109	62.5625	52.8125	90.1250	60.8125	38.0625	22.1250	40.0625
110	63.1250	57.2500	92.3750	62.5625	38.5000	21.5000	43.8125
111	65.5625	56.0000	97.4375	64.0000	39.0000	22.6875	43.2500
112	63.3750	59.4219	103.0000	63.0000	41.8750	24.1875	46.8750
113	63.3750	59.4375	105.0000	61.7500	40.3750	25.6250	50.1250
114	63.0000	61.6875	106.5000	59.3750	41.4375	25.5000	49.4375
115	64.9375	66.7656	109.6406	60.6875	42.6250	26.3750	52.3750
116	67.8125	66.0625	105.4375	61.8750	42.5625	27.1250	54.3750
117	64.0000	66.7500	101.6875	62.3750	39.3125	26.4375	49.8125
118	65.8750	66.1250	108.3750	60.1250	38.3750	26.5000	49.8750
119	68.1250	68.6875	104.9375	62.6600	37.2500	28.4375	52.3125
120	68.0625	66.6250	98.5000	62.7000	38.0000	28.1250	53.1875

## Prices

	O	P	Q	R	S	T
81	30.9375	43.5625	26.4375	23.2500	37.4375	38.4688
82	31.1875	44.5625	28.1875	21.6250	38.8125	39.4375
83	33.1250	51.3750	31.5000	23.5625	39.8125	45.8750
84	32.0000	51.3750	30.1875	26.7500	40.0625	44.2500
85	30.6250	50.5625	28.3125	25.2500	39.2500	42.8125
86	34.6875	50.3125	30.0625	26.1875	39.6875	38.9375
87	37.5000	50.5000	31.9375	26.8750	41.8750	34.0000
88	36.2500	49.9375	30.7500	27.7500	42.5000	33.8750
89	34.3750	48.1250	28.3750	28.6875	42.9375	31.7500
90	34.9375	48.3750	27.5000	28.4375	41.5000	31.6875
91	35.8750	46.6250	28.5625	27.1250	38.9375	30.4375
92	36.0000	45.5000	32.0000	26.0625	40.0000	28.5625
93	34.7500	45.5000	30.6250	25.2500	37.6250	26.9375
94	29.8125	41.1250	28.5000	23.9375	32.3750	27.4375
95	30.9375	39.9375	29.5000	21.6250	37.5000	26.9375
96	34.9375	43.6875	31.8750	22.8125	38.1250	31.8750
97	36.0000	43.6250	30.9375	21.2500	38.0625	30.3125
98	37.3125	44.0000	30.6875	20.7500	39.2500	30.3750
99	35.9375	43.6875	31.0625	19.5625	40.3125	28.9375
100	35.5000	43.5000	29.0625	20.4375	40.8750	27.8750
101	35.3750	40.8750	26.3750	18.0000	39.6875	25.4375
102	42.0000	44.6875	32.0000	20.6875	43.5000	33.0000
103	39.3750	44.1875	32.5625	23.8750	46.0000	31.0000
104	36.5000	42.3125	30.1250	23.9375	43.5625	28.0000
105	36.9375	43.1250	29.9375	24.4375	42.0000	28.1875
106	36.7500	39.3125	31.5000	26.2500	44.8750	29.4375
107	38.0000	39.5625	32.7500	27.4375	45.6875	29.0625
108	41.0000	42.0000	33.3125	29.0625	47.5000	31.9375
109	41.4375	41.3750	32.3125	28.3125	46.6250	30.4375
110	38.9375	39.3750	31.8125	29.3125	47.0000	31.3750
111	39.2500	40.1875	33.2500	29.8125	45.4375	32.3750
112	44.4375	41.0000	33.8125	30.5625	45.7500	34.8750
113	46.4375	39.1250	34.5625	31.6250	46.5000	30.8750
114	44.5000	38.9375	31.8125	32.5000	43.3125	30.5000
115	43.2500	38.9375	31.4844	31.9375	44.6250	31.5625
116	44.8750	38.0625	30.0625	31.2500	47.0625	32.7500
117	43.7500	36.8750	29.9375	29.8750	44.3750	31.1875
118	43.9375	37.2500	30.3750	28.8750	41.8750	31.1875
119	45.3000	36.9900	30.4375	31.6000	43.5600	33.5625
120	46.8500	35.2800	30.3125	32.1000	42.8000	32.0625

## Prices

	U	V	W	X	Z	AB	AC
81	31.5000	108.9375	15.3776	40.0000	64.0000	256.0000	44.27
82	31.3750	100.7500	14.2363	41.6875	63.6875	253.0000	43.76
83	36.0000	122.1875	14.1162	43.5625	70.6875	252.0000	48.95
84	36.0000	112.0625	14.5366	40.0000	68.0000	251.0000	47.54
85	34.9375	113.8750	14.2964	42.8750	66.5000	250.0000	46.85
86	38.3125	122.7344	14.5967	48.2500	68.0000	249.0000	49.46
87	40.5000	129.0000	15.7380	50.9375	74.3750	246.0000	51.35
88	37.5000	114.6250	16.9394	46.6250	71.6563	245.0000	49.59
89	35.0000	104.8750	17.4800	43.3125	68.7344	244.0000	47.83
90	34.9375	93.7500	17.1196	42.0000	65.3750	243.0000	46.29
91	34.5000	94.8750	16.7592	40.5625	63.8750	242.0000	46.13
92	34.3125	93.9375	15.8581	43.5625	64.0000	239.0000	45.57
93	34.7500	90.0000	15.6779	42.6250	59.1250	238.0000	43.82
94	32.3125	80.3750	14.5967	41.5625	55.7344	237.0000	40.01
95	32.1875	85.9375	13.6356	42.3750	56.0625	236.0000	41.01
96	36.0000	98.5000	13.3353	48.3750	60.5000	235.0000	44.87
97	35.8750	95.2500	13.4554	46.3750	60.8750	231.0000	44.44
98	38.1250	93.0000	13.5155	48.1875	61.5625	230.0000	45.51
99	38.3125	95.4375	13.3953	48.5625	61.4375	229.0000	45.70
100	37.2500	87.5000	13.5155	46.1250	58.3750	228.0000	44.08
101	37.5000	66.0000	15.3175	43.2500	53.4375	224.0000	39.93
102	39.5000	86.3750	19.2220	51.0625	62.4375	223.0000	46.55
103	39.3750	91.8125	18.6814	52.3125	61.3125	222.0000	45.92
104	36.4375	80.4375	17.7203	49.9375	56.6250	221.0000	42.73
105	39.6250	77.3125	17.4800	48.2500	57.2500	218.0000	42.32
106	39.5000	79.7500	19.0418	48.0625	57.2500	217.0000	43.30
107	39.4375	91.0625	20.4234	52.0000	60.1875	216.0000	44.80
108	41.8125	94.8750	21.0841	52.1250	61.9375	215.0000	46.95
109	40.0000	96.1875	20.9039	50.0000	62.7344	214.0000	46.87
110	36.6875	90.3750	20.4834	48.4375	61.9844	210.0000	46.87
111	37.7500	91.7500	21.6247	48.3125	63.8750	209.0000	48.20
112	39.6875	98.6875	22.3456	54.1250	66.5625	208.0000	50.15
113	39.0625	99.2500	21.1442	53.9375	66.3125	207.0000	50.66
114	38.4375	100.6875	20.0029	53.6250	66.3750	204.0000	50.03
115	38.1250	105.0000	19.8828	55.3750	67.7656	203.0000	50.99
116	40.1875	104.0625	20.6636	55.7500	67.1250	202.0000	51.68
117	38.6875	95.1875	19.5824	52.3750	64.5000	201.0000	49.56
118	39.5625	99.7500	20.4834	51.8125	65.5469	200.0000	49.55
119	41.5200	102.3125	21.8650	53.0625	67.0000	197.0000	50.53
120	41.8600	102.1250	21.8650	52.8125	66.7500	196.0000	50.06

## Prices

	AD	AE	AF	AG	AH	AI
81	978,362,850	100,968,750.00	64,937,500.00	42,418,750.00	47,475,000.00	41,510,000.00
82	967,058,220	102,093,750.00	65,187,500.00	42,350,000.00	45,393,750.00	41,050,000.00
83	1,081,698,600	115,031,250.00	65,312,500.00	48,537,500.00	56,025,000.00	44,080,000.00
84	1,050,602,850	100,781,250.00	66,187,500.00	44,618,750.00	55,631,250.00	44,610,000.00
85	1,035,480,775	94,500,000.00	65,062,500.00	44,000,000.00	57,262,500.00	43,550,000.00
86	1,093,113,900	102,562,500.00	63,000,000.00	48,606,250.00	62,831,250.00	46,900,000.00
87	1,134,740,500	111,187,500.00	61,250,000.00	56,031,250.00	67,050,000.00	48,490,000.00
88	1,096,037,800	106,031,250.00	61,812,500.00	50,050,000.00	62,100,000.00	48,650,000.00
89	1,056,942,545	99,281,250.00	62,250,000.00	46,956,250.00	60,131,250.00	48,450,000.00
90	1,022,919,645	85,968,750.00	63,312,500.00	44,412,500.00	59,400,000.00	50,000,000.00
91	1,019,418,440	93,656,250.00	59,875,000.00	43,450,000.00	60,750,000.00	48,960,000.00
92	1,007,057,520	95,343,750.00	59,812,500.00	43,725,000.00	58,950,000.00	42,240,000.00
93	968,512,900	96,000,000.00	59,562,500.00	42,900,000.00	55,406,250.00	40,760,000.00
94	884,168,575	85,875,000.00	58,937,500.00	41,593,750.00	50,512,500.00	37,250,000.00
95	906,308,100	89,718,750.00	59,000,000.00	38,912,500.00	48,487,500.00	37,660,000.00
96	991,724,675	98,531,250.00	59,500,000.00	42,487,500.00	59,118,750.00	38,280,000.00
97	982,033,525	98,906,250.00	61,187,500.00	41,800,000.00	59,006,250.00	38,500,000.00
98	1,005,679,585	98,250,000.00	62,812,500.00	43,518,750.00	66,248,460.00	35,750,000.00
99	1,009,975,010	92,437,500.00	63,375,000.00	43,381,250.00	69,693,750.00	35,250,000.00
100	974,210,835	87,281,250.00	63,312,500.00	42,006,250.00	67,542,210.00	34,800,000.00
101	882,380,975	70,101,600.00	62,062,500.00	43,450,000.00	57,375,000.00	32,390,000.00
102	1,028,831,395	86,906,250.00	60,750,000.00	54,587,500.00	67,275,000.00	37,500,000.00
103	1,014,820,775	80,625,000.00	56,687,500.00	48,812,500.00	66,037,500.00	42,180,000.00
104	944,307,175	77,250,000.00	54,875,000.00	46,956,250.00	57,150,000.00	41,290,000.00
105	935,356,115	74,343,750.00	58,875,000.00	50,325,000.00	57,712,500.00	40,030,000.00
106	956,926,175	74,718,750.00	60,687,500.00	47,850,000.00	56,925,000.00	42,850,000.00
107	990,010,275	68,625,000.00	60,875,000.00	49,225,000.00	61,593,750.00	44,890,000.00
108	1,037,598,475	72,093,750.00	60,562,500.00	51,012,500.00	63,731,250.00	47,230,000.00
109	1,035,848,900	75,656,250.00	61,812,500.00	51,012,500.00	64,462,500.00	46,470,000.00
110	1,035,742,775	76,312,500.00	62,000,000.00	48,881,250.00	63,337,500.00	46,700,000.00
111	1,065,152,200	80,250,000.00	60,312,500.00	53,006,250.00	72,337,500.00	48,790,000.00
112	1,108,301,560	84,000,000.00	60,062,500.00	55,068,750.00	75,937,500.00	49,770,000.00
113	1,119,581,700	87,375,000.00	60,000,000.00	54,931,250.00	77,850,000.00	53,800,000.00
114	1,105,577,275	89,906,250.00	58,687,500.00	53,831,250.00	74,475,000.00	53,840,000.00
115	1,126,935,905	89,156,250.00	59,500,000.00	53,075,000.00	76,331,250.00	54,150,000.00
116	1,142,104,225	90,187,500.00	60,125,000.00	54,587,500.00	78,412,500.00	55,750,000.00
117	1,095,293,025	85,593,750.00	59,937,500.00	53,625,000.00	70,200,000.00	55,770,000.00
118	1,095,042,150	87,093,750.00	59,437,500.00	52,662,500.00	68,568,750.00	54,590,000.00
119	1,116,755,750	81,000,000.00	60,500,000.00	55,206,250.00	70,537,500.00	55,000,000.00
120	1,106,286,250	79,125,000.00	60,130,000.00	57,681,250.00	70,256,250.00	54,310,000.00

## Prices

	AJ	AK	AL	AM	AN	AO
81	57,262,500.00	47,868,750.00	75,543,750.00	48,568,750.00	41,225,000.00	27,656,250.00
82	52,875,000.00	48,093,750.00	72,815,670.00	47,915,625.00	38,940,625.00	28,218,750.00
83	66,585,960.00	51,187,500.00	85,422,690.00	50,112,500.00	44,306,250.00	30,375,000.00
84	66,712,500.00	50,793,750.00	85,950,000.00	50,290,625.00	43,721,875.00	27,000,000.00
85	63,900,000.00	51,806,250.00	90,450,000.00	49,281,250.00	42,446,875.00	26,156,250.00
86	70,143,750.00	52,931,250.00	98,887,500.00	50,706,250.00	44,518,750.00	27,843,750.00
87	68,962,500.00	53,718,750.00	101,306,250.00	49,459,375.00	46,590,625.00	30,093,750.00
88	63,112,500.00	50,793,750.00	97,987,500.00	50,112,500.00	46,218,750.00	32,554,650.00
89	59,625,000.00	50,118,750.00	94,359,420.00	51,003,125.00	43,456,250.00	30,656,250.00
90	57,375,000.00	49,050,000.00	91,603,170.00	49,993,750.00	43,296,875.00	29,906,250.00
91	64,237,500.00	46,350,000.00	90,056,250.00	50,528,125.00	40,946,115.00	29,812,500.00
92	65,981,250.00	47,981,250.00	83,615,670.00	50,053,125.00	36,496,875.00	29,250,000.00
93	62,437,500.00	49,218,750.00	74,362,500.00	48,687,500.00	35,487,500.00	27,375,000.00
94	50,850,000.00	48,093,750.00	66,262,500.00	46,728,125.00	31,025,000.00	24,937,500.00
95	54,450,000.00	57,825,000.00	61,593,750.00	46,550,000.00	33,043,750.00	25,781,250.00
96	65,025,000.00	54,056,250.00	76,556,250.00	46,609,375.00	35,275,000.00	27,562,500.00
97	62,606,250.00	54,675,000.00	76,331,250.00	46,015,625.00	34,637,500.00	26,250,000.00
98	67,162,500.00	56,250,000.00	79,987,500.00	46,609,375.00	34,637,500.00	27,000,000.00
99	68,400,000.00	55,293,750.00	85,935,960.00	46,490,625.00	33,628,125.00	26,906,250.00
100	60,581,250.00	54,056,250.00	82,631,250.00	46,015,625.00	32,512,500.00	26,156,250.00
101	47,812,500.00	50,175,000.00	67,950,000.00	45,243,750.00	28,315,625.00	26,250,000.00
102	61,087,500.00	52,200,000.00	79,425,000.00	50,112,500.00	35,115,625.00	30,000,000.00
103	54,900,000.00	49,781,250.00	78,243,750.00	55,753,125.00	35,593,750.00	28,781,250.00
104	48,262,500.00	46,912,500.00	71,943,750.00	51,478,125.00	31,131,250.00	28,500,000.00
105	41,793,750.00	47,250,000.00	70,200,000.00	49,400,000.00	31,064,865.00	28,687,500.00
106	44,212,500.00	46,575,000.00	73,631,250.00	51,478,125.00	31,556,250.00	29,625,000.00
107	50,625,000.00	46,181,250.00	75,993,750.00	52,309,375.00	30,812,500.00	31,968,750.00
108	55,068,750.00	47,531,250.00	80,831,250.00	55,871,875.00	33,256,250.00	34,218,750.00
109	56,306,250.00	47,531,250.00	81,112,500.00	57,771,875.00	32,353,125.00	33,187,500.00
110	56,812,500.00	51,525,000.00	83,137,500.00	59,434,375.00	32,725,000.00	32,250,000.00
111	59,006,250.00	50,400,000.00	87,693,750.00	60,800,000.00	33,150,000.00	34,031,250.00
112	57,037,500.00	53,479,710.00	92,700,000.00	59,850,000.00	35,593,750.00	36,281,250.00
113	57,037,500.00	53,493,750.00	94,500,000.00	58,662,500.00	34,318,750.00	38,437,500.00
114	56,700,000.00	55,518,750.00	95,850,000.00	56,406,250.00	35,221,875.00	38,250,000.00
115	58,443,750.00	60,089,040.00	98,676,540.00	57,653,125.00	36,231,250.00	39,562,500.00
116	61,031,250.00	59,456,250.00	94,893,750.00	58,781,250.00	36,178,125.00	40,687,500.00
117	57,600,000.00	60,075,000.00	91,518,750.00	59,256,250.00	33,415,625.00	39,656,250.00
118	59,287,500.00	59,512,500.00	97,537,500.00	57,118,750.00	32,618,750.00	39,750,000.00
119	61,312,500.00	61,818,750.00	94,443,750.00	59,527,000.00	31,662,500.00	42,656,250.00
120	61,256,250.00	59,962,500.00	88,650,000.00	59,565,000.00	32,300,000.00	42,187,500.00

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Prices

	AP	AQ	AR	AS	AT	AU
81	27,800,000.00	30,937,500.00	43,562,500.00	26,437,500.00	23,250,000.00	74,875,000.00
82	25,850,000.00	31,187,500.00	44,562,500.00	28,187,500.00	21,625,000.00	77,625,000.00
83	31,600,000.00	33,125,000.00	51,375,000.00	31,500,000.00	23,562,500.00	79,625,000.00
84	29,050,000.00	32,000,000.00	51,375,000.00	30,187,500.00	26,750,000.00	80,125,000.00
85	28,000,000.00	30,625,000.00	50,562,500.00	28,312,500.00	25,250,000.00	78,500,000.00
86	30,900,000.00	34,687,500.00	50,312,500.00	30,062,500.00	26,187,500.00	79,375,000.00
87	34,800,000.00	37,500,000.00	50,500,000.00	31,937,500.00	26,875,000.00	83,750,000.00
88	32,750,000.00	36,250,000.00	49,937,500.00	30,750,000.00	27,750,000.00	85,000,000.00
89	31,400,000.00	34,375,000.00	48,125,000.00	28,375,000.00	28,687,500.00	85,875,000.00
90	29,600,000.00	34,937,500.00	48,375,000.00	27,500,000.00	28,437,500.00	83,000,000.00
91	30,400,000.00	35,875,000.00	46,625,000.00	28,562,500.00	27,125,000.00	77,875,000.00
92	30,650,000.00	36,000,000.00	45,500,000.00	32,000,000.00	26,062,500.00	80,000,000.00
93	25,850,000.00	34,750,000.00	45,500,000.00	30,625,000.00	25,250,000.00	75,250,000.00
94	22,350,000.00	29,812,500.00	41,125,000.00	28,500,000.00	23,937,500.00	64,750,000.00
95	22,750,000.00	30,937,500.00	39,937,500.00	29,500,000.00	21,625,000.00	75,000,000.00
96	28,000,000.00	34,937,500.00	43,687,500.00	31,875,000.00	22,812,500.00	76,250,000.00
97	27,750,000.00	36,000,000.00	43,625,000.00	30,937,500.00	21,250,000.00	76,125,000.00
98	28,200,000.00	37,312,500.00	44,000,000.00	30,687,500.00	20,750,000.00	78,500,000.00
99	30,250,000.00	35,937,500.00	43,687,500.00	31,062,500.00	19,562,500.00	80,625,000.00
100	26,400,000.00	35,500,000.00	43,500,000.00	29,062,500.00	20,437,500.00	81,750,000.00
101	24,150,000.00	35,375,000.00	40,875,000.00	26,375,000.00	18,000,000.00	79,375,000.00
102	31,487,520.00	42,000,000.00	44,687,500.00	32,000,000.00	20,687,500.00	87,000,000.00
103	28,300,000.00	39,375,000.00	44,187,500.00	32,562,500.00	23,875,000.00	92,000,000.00
104	24,450,000.00	36,500,000.00	42,312,500.00	30,125,000.00	23,937,500.00	87,125,000.00
105	24,500,000.00	36,937,500.00	43,125,000.00	29,937,500.00	24,437,500.00	84,000,000.00
106	26,700,000.00	36,750,000.00	39,312,500.00	31,500,000.00	26,250,000.00	89,750,000.00
107	31,450,000.00	38,000,000.00	39,562,500.00	32,750,000.00	27,437,500.00	91,375,000.00
108	32,750,000.00	41,000,000.00	42,000,000.00	33,312,500.00	29,062,500.00	95,000,000.00
109	32,050,000.00	41,437,500.00	41,375,000.00	32,312,500.00	28,312,500.00	93,250,000.00
110	35,050,000.00	38,937,500.00	39,375,000.00	31,812,500.00	29,312,500.00	94,000,000.00
111	34,600,000.00	39,250,000.00	40,187,500.00	33,250,000.00	29,812,500.00	90,875,000.00
112	37,500,000.00	44,437,500.00	41,000,000.00	33,812,500.00	30,562,500.00	91,500,000.00
113	40,100,000.00	46,437,500.00	39,125,000.00	34,562,500.00	31,625,000.00	93,000,000.00
114	39,550,000.00	44,500,000.00	38,937,500.00	31,812,500.00	32,500,000.00	86,625,000.00
115	41,900,000.00	43,250,000.00	38,937,500.00	31,484,400.00	31,937,500.00	89,250,000.00
116	43,500,000.00	44,875,000.00	38,062,500.00	30,062,500.00	31,250,000.00	94,125,000.00
117	39,850,000.00	43,750,000.00	36,875,000.00	29,937,500.00	29,875,000.00	88,750,000.00
118	39,900,000.00	43,937,500.00	37,250,000.00	30,375,000.00	28,875,000.00	83,750,000.00
119	41,850,000.00	45,300,000.00	36,990,000.00	30,437,500.00	31,600,000.00	87,120,000.00
120	42,550,000.00	46,850,000.00	35,280,000.00	30,312,500.00	32,100,000.00	85,600,000.00

## Prices

	AV	AW	AX	AY	AZ	BB
81	38,468,800.00	15,750,000.00	54,468,750.00	15,377,600.00	32,000,000.00	
82	39,437,500.00	15,687,500.00	50,375,000.00	14,236,300.00	33,350,000.00	
83	45,875,000.00	18,000,000.00	61,093,750.00	14,116,200.00	34,850,000.00	
84	44,250,000.00	18,000,000.00	56,031,250.00	14,536,600.00	32,000,000.00	
85	42,812,500.00	17,468,750.00	56,937,500.00	14,296,400.00	34,300,000.00	
86	38,937,500.00	19,156,250.00	61,367,200.00	14,596,700.00	38,600,000.00	
87	34,000,000.00	20,250,000.00	64,500,000.00	15,738,000.00	40,750,000.00	
88	33,875,000.00	18,750,000.00	57,312,500.00	16,939,400.00	37,300,000.00	
89	31,750,000.00	17,500,000.00	52,437,500.00	17,480,000.00	34,650,000.00	
90	31,687,500.00	17,468,750.00	46,875,000.00	17,119,600.00	33,600,000.00	
91	30,437,500.00	17,250,000.00	47,437,500.00	16,759,200.00	32,450,000.00	
92	28,562,500.00	17,156,250.00	46,968,750.00	15,858,100.00	34,850,000.00	
93	26,937,500.00	17,375,000.00	45,000,000.00	15,677,900.00	34,100,000.00	
94	27,437,500.00	16,156,250.00	40,187,500.00	14,596,700.00	33,250,000.00	
95	26,937,500.00	16,093,750.00	42,968,750.00	13,635,600.00	33,900,000.00	
96	31,875,000.00	18,000,000.00	49,250,000.00	13,335,300.00	38,700,000.00	
97	30,312,500.00	17,937,500.00	47,625,000.00	13,455,400.00	37,100,000.00	
98	30,375,000.00	19,062,500.00	46,500,000.00	13,515,500.00	38,550,000.00	
99	28,937,500.00	19,156,250.00	47,718,750.00	13,395,300.00	38,850,000.00	
100	27,875,000.00	18,625,000.00	43,750,000.00	13,515,500.00	36,900,000.00	
101	25,437,500.00	18,750,000.00	33,000,000.00	15,317,500.00	34,600,000.00	
102	33,000,000.00	19,750,000.00	43,187,500.00	19,222,000.00	40,850,000.00	
103	31,000,000.00	19,687,500.00	45,906,250.00	18,681,400.00	41,850,000.00	
104	28,000,000.00	18,218,750.00	40,218,750.00	17,720,300.00	39,950,000.00	
105	28,187,500.00	19,812,500.00	38,656,250.00	17,480,000.00	38,600,000.00	
106	29,437,500.00	19,750,000.00	39,875,000.00	19,041,800.00	38,450,000.00	
107	29,062,500.00	19,718,750.00	45,531,250.00	20,423,400.00	41,600,000.00	
108	31,937,500.00	20,906,250.00	47,437,500.00	21,084,100.00	41,700,000.00	
109	30,437,500.00	20,000,000.00	48,093,750.00	20,903,900.00	40,000,000.00	
110	31,375,000.00	18,343,750.00	45,187,500.00	20,483,400.00	38,750,000.00	
111	32,375,000.00	18,875,000.00	45,875,000.00	21,624,700.00	38,650,000.00	
112	34,875,000.00	19,843,750.00	49,343,750.00	22,345,600.00	43,300,000.00	
113	30,875,000.00	19,531,250.00	49,625,000.00	21,144,200.00	43,150,000.00	
114	30,500,000.00	19,218,750.00	50,343,750.00	20,002,900.00	42,900,000.00	
115	31,562,500.00	19,062,500.00	52,500,000.00	19,882,800.00	44,300,000.00	
116	32,750,000.00	20,093,750.00	52,031,250.00	20,663,600.00	44,600,000.00	
117	31,187,500.00	19,343,750.00	47,593,750.00	19,582,400.00	41,900,000.00	
118	31,187,500.00	19,781,250.00	49,875,000.00	20,483,400.00	41,450,000.00	
119	33,562,500.00	20,760,000.00	51,156,250.00	21,865,000.00	42,450,000.00	
120	32,062,500.00	20,930,000.00	51,062,500.00	21,865,000.00	42,250,000.00	



## Prices

	A	B	C	D	E	F	G
121	118	1/31/2001	43.6875	59.8600	50.3125	73.5000	52.5600
122	119	2/1/2001	45.4375	59.7000	50.5625	70.1250	49.8300
123	120	2/2/2001	43.5625	57.7000	47.7500	65.7500	47.7900
124	121	2/5/2001	45.3750	58.9800	45.8125	64.3750	49.3700
125	122	2/6/2001	44.0000	59.6400	45.8750	55.0625	48.8500
126	123	2/7/2001	40.3125	59.6800	44.7500	49.8125	48.2000
127	124	2/8/2001	35.9375	59.9500	42.3750	46.7500	48.7600
128	125	2/9/2001	35.3750	59.5800	42.6250	44.4375	47.2500
129	126	2/12/2001	37.8750	59.0100	44.0000	43.1250	47.5300
130	127	2/13/2001	37.1875	59.9800	41.2500	43.0000	48.0900
131	128	2/14/2001	40.0625	59.1300	46.8125	47.1250	48.5300
132	129	2/15/2001	38.9375	58.9200	49.4375	51.6875	49.9500
133	130	2/16/2001	36.3125	58.9300	48.2344	43.8125	48.3600
134	131	2/20/2001	34.2500	56.9500	45.9375	38.0625	44.9500
135	132	2/21/2001	30.0625	57.6000	46.6250	36.0625	44.4000
136	133	2/22/2001	30.4375	57.0000	46.8125	34.6250	44.9000
137	134	2/23/2001	32.6250	56.6100	47.9375	37.0625	43.3000
138	135	2/26/2001	31.6875	57.6000	47.8125	35.0625	46.1200
139	136	2/27/2001	30.5000	57.9400	45.0000	30.3125	44.7000
140	137	2/28/2001	29.0625	59.0000	42.2500	26.7500	44.0300
141	138	3/1/2001	28.0625	59.1900	45.3281	29.5625	44.0000
142	139	3/2/2001	27.6875	58.9400	45.2500	28.8125	42.0600
143	140	3/5/2001	27.0625	59.1600	47.5625	29.1875	43.8000
144	141	3/6/2001	28.5000	58.7500	49.8125	30.6875	46.5400
145	142	3/7/2001	28.6875	58.8500	49.8125	29.0000	45.3000
146	143	3/8/2001	27.1250	59.4800	50.3125	29.7500	44.5000
147	144	3/9/2001	26.9375	57.8400	46.7500	26.4375	42.8700
148	145	3/12/2001	26.0000	55.7500	46.3125	23.7500	39.2700
149	146	3/13/2001	27.3750	56.2100	47.8750	26.8750	40.7000
150	147	3/14/2001	26.1250	53.7000	48.1875	25.0000	40.0400
151	148	3/15/2001	25.0000	52.0500	46.1250	23.6250	40.5900
152	149	3/16/2001	28.6250	49.8900	44.2500	22.2500	39.3500
153	150	3/19/2001	31.7500	51.7500	46.6250	22.7500	39.9000
154	151	3/20/2001	32.8125	51.0400	42.8125	19.0625	38.7900
155	152	3/21/2001	32.5625	52.5000	44.8750	19.7500	37.8400
156	153	3/22/2001	36.0000	52.2500	49.4375	24.1875	36.7700
157	154	3/23/2001	35.6875	51.5000	50.2500	23.1875	39.5200
158	155	3/26/2001	33.5900	53.4700	49.3125	21.2500	40.8900
159	156	3/27/2001	36.6000	54.1900	50.8750	21.6250	43.0000
160	157	3/28/2001	33.9700	53.4100	47.6875	18.3125	40.7600

## Prices

	H	I	J	K	L	M	N
121	65.9375	64.5000	90.3125	65.2100	37.4375	26.1250	49.3750
122	67.1875	65.5000	89.9375	67.0000	38.2500	25.9375	48.2500
123	60.5000	62.2500	82.8750	62.6900	35.5000	25.1875	46.2344
124	64.6250	65.9375	84.3750	60.6100	34.5625	24.4375	46.6875
125	62.8750	66.4375	83.7500	60.5500	35.7500	26.8750	46.8750
126	56.8750	66.7500	80.0625	60.0900	31.0625	26.5000	46.1875
127	52.6719	68.0000	74.5938	60.5900	30.0000	26.0625	47.1250
128	52.8750	71.1250	74.1250	58.8000	28.1875	23.5000	44.5625
129	51.0000	72.1250	63.0000	58.0100	29.5625	23.2500	47.1875
130	47.2500	71.1875	53.4375	58.0200	28.5000	22.2500	47.4375
131	53.0000	71.3125	54.2500	59.0200	29.3750	22.9375	50.1875
132	56.1250	69.9375	56.0625	60.4000	30.8125	25.0000	50.5000
133	50.8125	71.2656	53.2500	59.1000	28.2500	23.5000	48.7500
134	49.7500	72.2500	44.8750	58.0000	26.0625	22.0000	44.5625
135	45.8125	71.8750	44.6875	59.1300	25.1250	20.6250	45.6875
136	41.9375	70.0000	41.9375	57.2100	26.4375	21.9375	44.5625
137	44.0625	71.9375	45.6875	56.7700	27.0000	23.2500	44.4375
138	45.7500	74.5000	48.6250	56.9500	26.0625	22.8125	45.3750
139	40.1875	70.7500	43.5000	57.7000	24.0000	22.2500	42.1250
140	38.3750	71.5625	38.8125	57.1500	23.6875	21.8750	38.3281
141	38.9219	69.9375	40.3125	57.9500	24.5000	21.5000	37.5000
142	32.6875	68.3125	35.6250	60.0400	22.1875	22.0625	37.6875
143	34.8125	68.6875	36.4375	59.5500	23.0781	23.4375	38.0000
144	37.3750	68.0625	38.5000	58.6700	24.0000	26.1875	40.3125
145	36.9375	66.0000	38.7500	59.8500	24.0000	25.9375	42.5000
146	33.5625	63.6250	33.3125	59.9000	22.8125	26.1250	39.1250
147	30.7500	63.5625	27.3750	57.9100	20.6250	23.3750	34.0000
148	30.3125	60.7500	27.4800	55.0100	18.8125	22.0625	31.5625
149	36.1875	63.3750	30.4300	55.1200	21.3750	23.9375	34.4375
150	35.2500	63.7500	29.2300	56.1100	20.2500	24.3750	34.1250
151	30.8125	64.5000	28.9200	56.4000	20.3125	24.1875	34.6250
152	30.1875	61.5000	29.8000	56.7000	19.9375	23.6875	32.5000
153	34.6250	62.6250	31.9900	56.2000	20.8125	24.8750	37.0625
154	31.6250	60.3125	29.8800	55.0700	19.0625	24.4375	35.3125
155	32.0625	56.8750	29.9400	53.1900	19.3125	24.6875	32.1250
156	34.0000	59.0625	33.4100	50.3000	19.7500	26.2500	36.6250
157	34.5000	62.3750	29.9400	49.9900	18.6875	27.4375	37.1875
158	32.0625	64.3125	24.3400	51.0000	17.8750	25.6875	38.4375
159	33.7500	65.0625	25.0000	55.0000	18.1250	27.0000	40.0000
160	27.0000	62.9375	22.2200	53.7600	15.7500	26.4375	36.1875

## Prices

	O	P	Q	R	S	T
121	45.7700	34.3500	29.1250	30.5000	42.1200	30.5625
122	42.1800	34.3700	30.0625	32.1000	41.8000	31.1250
123	41.2000	32.6000	27.7500	30.3100	39.7600	29.1875
124	38.2800	33.0000	27.5000	28.9500	40.9000	27.8750
125	39.7200	33.1200	27.6250	28.0600	41.1800	27.8125
126	38.8200	31.1500	27.6875	27.2000	40.4400	26.5625
127	39.9700	30.0200	27.1250	25.8000	41.0000	25.8750
128	38.7600	27.9900	23.5625	25.0800	40.4300	24.5625
129	39.4200	29.6500	23.0000	26.2500	40.9000	25.5000
130	41.5000	28.1000	22.5625	26.1500	41.6900	25.1250
131	46.5000	28.2300	25.0000	25.1000	39.0800	26.6875
132	44.6000	28.4200	25.5000	24.4000	39.7000	27.1875
133	42.5500	26.5000	24.0000	23.7600	37.1000	23.1875
134	38.6000	25.5000	23.1250	22.9300	36.8500	22.2500
135	38.4000	24.2500	23.0000	21.2000	37.5000	19.6250
136	38.0000	23.2500	23.3750	24.1000	36.4900	20.8125
137	37.2500	21.3400	22.0000	24.4500	35.9000	20.8125
138	35.0000	22.7500	23.1875	25.6000	38.2700	20.7500
139	35.0500	21.9000	21.6875	26.4900	37.4500	19.8125
140	34.2200	22.0000	19.0000	25.1800	36.9700	19.8750
141	35.9000	23.5400	21.3750	23.2000	34.8600	20.0625
142	36.0900	24.0500	16.8750	22.0500	34.7300	19.6250
143	39.0000	26.0000	17.0000	22.4700	34.3000	20.9375
144	43.8600	25.5000	17.6250	22.6400	34.9400	22.2500
145	41.0000	25.5000	18.6250	22.9500	34.5200	22.0625
146	42.8500	25.1100	17.5000	22.1800	35.2900	20.3125
147	40.7500	22.8000	16.3750	21.1200	33.8000	17.4375
148	40.7600	21.4500	15.1875	20.0500	33.2500	17.0625
149	44.0500	22.0500	16.9375	20.2700	34.7800	19.1250
150	43.5200	21.8000	16.0625	18.9000	35.4400	18.4375
151	41.3000	24.9500	14.6875	19.5100	37.9200	18.0625
152	40.0500	24.7100	14.0625	18.5000	36.8400	18.1875
153	43.0600	26.7000	15.4375	19.9700	37.0000	19.0625
154	40.6000	25.4000	14.3750	18.2600	36.3800	17.3750
155	42.0100	25.0600	14.7500	17.5000	34.2300	18.3750
156	46.7000	25.0000	15.5000	17.0200	34.0000	18.8750
157	48.8300	26.4600	15.8750	18.9000	35.2500	18.2500
158	46.8700	27.0800	15.6900	19.7000	36.3500	17.2400
159	48.0000	27.3400	16.6500	20.6000	37.1900	17.4100
160	44.2500	24.5000	15.1000	18.9500	34.9800	15.8500

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Prices

	U	V	W	X	Z	AB	AC
121	43.8200	94.8750	20.7237	54.0000	64.3000	195.0000	47.89
122	41.0000	92.8750	21.3244	57.6250	65.1500	194.0000	47.88
123	39.3800	87.0000	19.2821	53.0625	61.5500	193.0000	45.14
124	37.5300	89.8750	20.5435	50.8750	61.5000	190.0000	45.32
125	37.9000	86.1250	19.9428	50.5000	61.6000	189.0000	44.93
126	35.0000	82.0625	19.3421	48.0000	60.6000	188.0000	43.19
127	35.0100	80.2500	19.5223	47.3750	58.7900	187.0000	42.21
128	35.1000	78.1250	18.2609	47.4375	56.4000	186.0000	41.15
129	35.8500	71.9375	19.1619	49.5000	57.0800	183.0000	41.14
130	35.1300	69.6250	17.8404	47.7500	55.3000	182.0000	40.20
131	39.3500	76.3750	16.8192	51.2500	57.4500	181.0000	41.78
132	41.7000	82.8125	15.5578	54.0000	58.4000	180.0000	42.72
133	39.0000	76.5625	15.1974	47.8750	55.1300	179.0000	40.36
134	36.8400	71.6875	15.7380	42.3750	52.9900	175.0000	38.20
135	37.9500	72.3750	15.2575	43.2500	51.5000	174.0000	37.49
136	37.2900	65.5000	16.0384	42.8750	51.0000	173.0000	37.03
137	35.8300	62.3750	15.8581	41.1250	51.1800	172.0000	37.25
138	35.8200	68.9375	16.9995	41.8750	52.1500	169.0000	38.05
139	33.1000	62.3125	16.5790	38.7500	49.0000	168.0000	36.27
140	31.2300	64.9375	15.9783	38.8750	47.4500	167.0000	35.22
141	31.0000	70.6875	15.2575	41.5000	48.8000	166.0000	35.62
142	33.1600	63.6250	15.5578	42.5000	46.7000	165.0000	34.68
143	36.4500	59.8125	15.4977	43.2500	47.5500	162.0000	35.39
144	36.0100	67.7500	16.0384	45.1875	49.4000	161.0000	36.81
145	36.1800	66.8125	16.5189	45.5625	49.4200	160.0000	36.62
146	36.0100	63.8750	15.7981	45.3125	48.5000	159.0000	35.82
147	33.6500	58.3125	16.2786	42.9375	45.1000	158.0000	33.64
148	32.6000	53.9375	15.1373	41.3125	42.3000	155.0000	32.22
149	34.5000	59.1250	14.5967	44.5000	44.4500	154.0000	34.15
150	34.7500	59.6875	15.7981	44.7500	43.7500	153.0000	33.78
151	33.0000	54.3750	16.8793	43.5625	42.1500	152.0000	33.42
152	31.4200	54.6250	16.7592	41.5781	41.1000	151.0000	32.80
153	34.9400	54.0000	17.6602	44.8125	43.2600	148.0000	34.46
154	32.8100	53.6250	16.5189	41.1250	40.3500	147.0000	32.93
155	32.9600	53.4375	16.0984	41.6250	40.3500	146.0000	32.66
156	36.0000	55.1875	16.3988	46.5000	42.8000	145.0000	34.23
157	37.8800	53.8750	16.2186	46.0000	42.8000	144.0000	34.70
158	37.5800	50.0600	17.2998	43.1250	41.8100	141.0000	34.14
159	37.6000	54.9200	18.3210	42.1250	43.2500	140.0000	35.37
160	34.4300	47.5000	18.0807	39.6250	39.7000	139.0000	32.92

## Prices

	AD	AE	AF	AG	AH	AI
121	1,058,397,575	65,531,250.00	59,860,000.00	55,343,750.00	66,150,000.00	52,560,000.00
122	1,058,248,150	68,156,250.00	59,700,000.00	55,618,750.00	63,112,500.00	49,830,000.00
123	997,585,120	65,343,750.00	57,700,000.00	52,525,000.00	59,175,000.00	47,790,000.00
124	1,001,502,375	68,062,500.00	58,980,000.00	50,393,750.00	57,937,500.00	49,370,000.00
125	993,040,300	66,000,000.00	59,640,000.00	50,462,500.00	49,556,250.00	48,850,000.00
126	954,485,725	60,468,750.00	59,680,000.00	49,225,000.00	44,831,250.00	48,200,000.00
127	932,739,430	53,906,250.00	59,950,000.00	46,612,500.00	42,075,000.00	48,760,000.00
128	909,444,025	53,062,500.00	59,580,000.00	46,887,500.00	39,993,750.00	47,250,000.00
129	909,215,775	56,812,500.00	59,010,000.00	48,400,000.00	38,812,500.00	47,530,000.00
130	888,518,150	55,781,250.00	59,980,000.00	45,375,000.00	38,700,000.00	48,090,000.00
131	923,319,450	60,093,750.00	59,130,000.00	51,493,750.00	42,412,500.00	48,530,000.00
132	944,080,925	58,406,250.00	58,920,000.00	54,381,250.00	46,518,750.00	49,950,000.00
133	891,926,780	54,468,750.00	58,930,000.00	53,057,840.00	39,431,250.00	48,360,000.00
134	844,159,875	51,375,000.00	56,950,000.00	50,531,250.00	34,256,250.00	44,950,000.00
135	828,487,250	45,093,750.00	57,600,000.00	51,287,500.00	32,456,250.00	44,400,000.00
136	818,328,525	45,656,250.00	57,000,000.00	51,493,750.00	31,162,500.00	44,900,000.00
137	823,273,350	48,937,500.00	56,610,000.00	52,731,250.00	33,356,250.00	43,300,000.00
138	840,868,875	47,531,250.00	57,600,000.00	52,593,750.00	31,556,250.00	46,120,000.00
139	801,580,250	45,750,000.00	57,940,000.00	49,500,000.00	27,281,250.00	44,700,000.00
140	778,327,655	43,593,750.00	59,000,000.00	46,475,000.00	24,075,000.00	44,030,000.00
141	787,231,870	42,093,750.00	59,190,000.00	49,860,910.00	26,606,250.00	44,000,000.00
142	766,441,425	41,531,250.00	58,940,000.00	49,775,000.00	25,931,250.00	42,060,000.00
143	782,066,585	40,593,750.00	59,160,000.00	52,318,750.00	26,268,750.00	43,800,000.00
144	813,487,400	42,750,000.00	58,750,000.00	54,793,750.00	27,618,750.00	46,540,000.00
145	809,400,150	43,031,250.00	58,850,000.00	54,793,750.00	26,100,000.00	45,300,000.00
146	791,542,475	40,687,500.00	59,480,000.00	55,343,750.00	26,775,000.00	44,500,000.00
147	743,354,350	40,406,250.00	57,840,000.00	51,425,000.00	23,793,750.00	42,870,000.00
148	712,086,925	39,000,000.00	55,750,000.00	50,943,750.00	21,375,000.00	39,270,000.00
149	754,806,450	41,062,500.00	56,210,000.00	52,662,500.00	24,187,500.00	40,700,000.00
150	746,637,100	39,187,500.00	53,700,000.00	53,006,250.00	22,500,000.00	40,040,000.00
151	738,542,925	37,500,000.00	52,050,000.00	50,737,500.00	21,262,500.00	40,590,000.00
152	724,793,555	42,937,500.00	49,890,000.00	48,675,000.00	20,025,000.00	39,350,000.00
153	761,606,825	47,625,000.00	51,750,000.00	51,287,500.00	20,475,000.00	39,900,000.00
154	727,766,775	49,218,750.00	51,040,000.00	47,093,750.00	17,156,250.00	38,790,000.00
155	721,740,525	48,843,750.00	52,500,000.00	49,362,500.00	17,775,000.00	37,840,000.00
156	756,530,300	54,000,000.00	52,250,000.00	54,381,250.00	21,768,750.00	36,770,000.00
157	766,820,725	53,531,250.00	51,500,000.00	55,275,000.00	20,868,750.00	39,520,000.00
158	754,582,050	50,385,000.00	53,470,000.00	54,243,750.00	19,125,000.00	40,890,000.00
159	781,763,500	54,900,000.00	54,190,000.00	55,962,500.00	19,462,500.00	43,000,000.00
160	727,425,700	50,955,000.00	53,410,000.00	52,456,250.00	16,481,250.00	40,760,000.00

## Prices

	AJ	AK	AL	AM	AN	AO
121	59,343,750.00	58,050,000.00	81,281,250.00	61,949,500.00	31,821,875.00	39,187,500.00
122	60,468,750.00	58,950,000.00	80,943,750.00	63,650,000.00	32,512,500.00	38,906,250.00
123	54,450,000.00	56,025,000.00	74,587,500.00	59,555,500.00	30,175,000.00	37,781,250.00
124	58,162,500.00	59,343,750.00	75,937,500.00	57,579,500.00	29,378,125.00	36,656,250.00
125	56,587,500.00	59,793,750.00	75,375,000.00	57,522,500.00	30,387,500.00	40,312,500.00
126	51,187,500.00	60,075,000.00	72,056,250.00	57,085,500.00	26,403,125.00	39,750,000.00
127	47,404,710.00	61,200,000.00	67,134,420.00	57,560,500.00	25,500,000.00	39,093,750.00
128	47,587,500.00	64,012,500.00	66,712,500.00	55,860,000.00	23,959,375.00	35,250,000.00
129	45,900,000.00	64,912,500.00	56,700,000.00	55,109,500.00	25,128,125.00	34,875,000.00
130	42,525,000.00	64,068,750.00	48,093,750.00	55,119,000.00	24,225,000.00	33,375,000.00
131	47,700,000.00	64,181,250.00	48,825,000.00	56,069,000.00	24,968,750.00	34,406,250.00
132	50,512,500.00	62,943,750.00	50,456,250.00	57,380,000.00	26,190,625.00	37,500,000.00
133	45,731,250.00	64,139,040.00	47,925,000.00	56,145,000.00	24,012,500.00	35,250,000.00
134	44,775,000.00	65,025,000.00	40,387,500.00	55,100,000.00	22,153,125.00	33,000,000.00
135	41,231,250.00	64,687,500.00	40,218,750.00	56,173,500.00	21,356,250.00	30,937,500.00
136	37,743,750.00	63,000,000.00	37,743,750.00	54,349,500.00	22,471,875.00	32,906,250.00
137	39,656,250.00	64,743,750.00	41,118,750.00	53,931,500.00	22,950,000.00	34,875,000.00
138	41,175,000.00	67,050,000.00	43,762,500.00	54,102,500.00	22,153,125.00	34,218,750.00
139	36,168,750.00	63,675,000.00	39,150,000.00	54,815,000.00	20,400,000.00	33,375,000.00
140	34,537,500.00	64,406,250.00	34,931,250.00	54,292,500.00	20,134,375.00	32,812,500.00
141	35,029,710.00	62,943,750.00	36,281,250.00	55,052,500.00	20,825,000.00	32,250,000.00
142	29,418,750.00	61,481,250.00	32,062,500.00	57,038,000.00	18,859,375.00	33,093,750.00
143	31,331,250.00	61,818,750.00	32,793,750.00	56,572,500.00	19,616,385.00	35,156,250.00
144	33,637,500.00	61,256,250.00	34,650,000.00	55,736,500.00	20,400,000.00	39,281,250.00
145	33,243,750.00	59,400,000.00	34,875,000.00	56,857,500.00	20,400,000.00	38,906,250.00
146	30,206,250.00	57,262,500.00	29,981,250.00	56,905,000.00	19,390,625.00	39,187,500.00
147	27,675,000.00	57,206,250.00	24,637,500.00	55,014,500.00	17,531,250.00	35,062,500.00
148	27,281,250.00	54,675,000.00	24,732,000.00	52,259,500.00	15,990,625.00	33,093,750.00
149	32,568,750.00	57,037,500.00	27,387,000.00	52,364,000.00	18,168,750.00	35,906,250.00
150	31,725,000.00	57,375,000.00	26,307,000.00	53,304,500.00	17,212,500.00	36,562,500.00
151	27,731,250.00	58,050,000.00	26,028,000.00	53,580,000.00	17,265,625.00	36,281,250.00
152	27,168,750.00	55,350,000.00	26,820,000.00	53,865,000.00	16,946,875.00	35,531,250.00
153	31,162,500.00	56,362,500.00	28,791,000.00	53,390,000.00	17,690,625.00	37,312,500.00
154	28,462,500.00	54,281,250.00	26,892,000.00	52,316,500.00	16,203,125.00	36,656,250.00
155	28,856,250.00	51,187,500.00	26,946,000.00	50,530,500.00	16,415,625.00	37,031,250.00
156	30,600,000.00	53,156,250.00	30,069,000.00	47,785,000.00	16,787,500.00	39,375,000.00
157	31,050,000.00	56,137,500.00	26,946,000.00	47,490,500.00	15,884,375.00	41,156,250.00
158	28,856,250.00	57,881,250.00	21,906,000.00	48,450,000.00	15,193,750.00	38,531,250.00
159	30,375,000.00	58,556,250.00	22,500,000.00	52,250,000.00	15,406,250.00	40,500,000.00
160	24,300,000.00	56,643,750.00	19,998,000.00	51,072,000.00	13,387,500.00	39,656,250.00

## Prices

	AP	AQ	AR	AS	AT	AU
121	39,500,000.00	45,770,000.00	34,350,000.00	29,125,000.00	30,500,000.00	84,240,000.00
122	38,600,000.00	42,180,000.00	34,370,000.00	30,062,500.00	32,100,000.00	83,600,000.00
123	36,987,520.00	41,200,000.00	32,600,000.00	27,750,000.00	30,310,000.00	79,520,000.00
124	37,350,000.00	38,280,000.00	33,000,000.00	27,500,000.00	28,950,000.00	81,800,000.00
125	37,500,000.00	39,720,000.00	33,120,000.00	27,625,000.00	28,060,000.00	82,360,000.00
126	36,950,000.00	38,820,000.00	31,150,000.00	27,687,500.00	27,200,000.00	80,880,000.00
127	37,700,000.00	39,970,000.00	30,020,000.00	27,125,000.00	25,800,000.00	82,000,000.00
128	35,650,000.00	38,760,000.00	27,990,000.00	23,562,500.00	25,080,000.00	80,860,000.00
129	37,750,000.00	39,420,000.00	29,650,000.00	23,000,000.00	26,250,000.00	81,800,000.00
130	37,950,000.00	41,500,000.00	28,100,000.00	22,562,500.00	26,150,000.00	83,380,000.00
131	40,150,000.00	46,500,000.00	28,230,000.00	25,000,000.00	25,100,000.00	78,160,000.00
132	40,400,000.00	44,600,000.00	28,420,000.00	25,500,000.00	24,400,000.00	79,400,000.00
133	39,000,000.00	42,550,000.00	26,500,000.00	24,000,000.00	23,760,000.00	74,200,000.00
134	35,650,000.00	38,600,000.00	25,500,000.00	23,125,000.00	22,930,000.00	73,700,000.00
135	36,550,000.00	38,400,000.00	24,250,000.00	23,000,000.00	21,200,000.00	75,000,000.00
136	35,650,000.00	38,000,000.00	23,250,000.00	23,375,000.00	24,100,000.00	72,980,000.00
137	35,550,000.00	37,250,000.00	21,340,000.00	22,000,000.00	24,450,000.00	71,800,000.00
138	36,300,000.00	35,000,000.00	22,750,000.00	23,187,500.00	25,600,000.00	76,540,000.00
139	33,700,000.00	35,050,000.00	21,900,000.00	21,687,500.00	26,490,000.00	74,900,000.00
140	30,662,480.00	34,220,000.00	22,000,000.00	19,000,000.00	25,180,000.00	73,940,000.00
141	30,000,000.00	35,900,000.00	23,540,000.00	21,375,000.00	23,200,000.00	69,720,000.00
142	30,150,000.00	36,090,000.00	24,050,000.00	16,875,000.00	22,050,000.00	69,460,000.00
143	30,400,000.00	39,000,000.00	26,000,000.00	17,000,000.00	22,470,000.00	68,600,000.00
144	32,250,000.00	43,860,000.00	25,500,000.00	17,625,000.00	22,640,000.00	69,880,000.00
145	34,000,000.00	41,000,000.00	25,500,000.00	18,625,000.00	22,950,000.00	69,040,000.00
146	31,300,000.00	42,850,000.00	25,110,000.00	17,500,000.00	22,180,000.00	70,580,000.00
147	27,200,000.00	40,750,000.00	22,800,000.00	16,375,000.00	21,120,000.00	67,600,000.00
148	25,250,000.00	40,760,000.00	21,450,000.00	15,187,500.00	20,050,000.00	66,500,000.00
149	27,550,000.00	44,050,000.00	22,050,000.00	16,937,500.00	20,270,000.00	69,560,000.00
150	27,300,000.00	43,520,000.00	21,800,000.00	16,062,500.00	18,900,000.00	70,880,000.00
151	27,700,000.00	41,300,000.00	24,950,000.00	14,687,500.00	19,510,000.00	75,840,000.00
152	26,000,000.00	40,050,000.00	24,710,000.00	14,062,500.00	18,500,000.00	73,680,000.00
153	29,650,000.00	43,060,000.00	26,700,000.00	15,437,500.00	19,970,000.00	74,000,000.00
154	28,250,000.00	40,600,000.00	25,400,000.00	14,375,000.00	18,260,000.00	72,760,000.00
155	25,700,000.00	42,010,000.00	25,060,000.00	14,750,000.00	17,500,000.00	68,460,000.00
156	29,300,000.00	46,700,000.00	25,000,000.00	15,500,000.00	17,020,000.00	68,000,000.00
157	29,750,000.00	48,830,000.00	26,460,000.00	15,875,000.00	18,900,000.00	70,500,000.00
158	30,750,000.00	46,870,000.00	27,080,000.00	15,690,000.00	19,700,000.00	72,700,000.00
159	32,000,000.00	48,000,000.00	27,340,000.00	16,650,000.00	20,600,000.00	74,380,000.00
160	28,950,000.00	44,250,000.00	24,500,000.00	15,100,000.00	18,950,000.00	69,960,000.00

## Prices

	AV	AW	AX	AY	AZ	BB
121	30,562,500.00	21,910,000.00	47,437,500.00	20,723,700.00	43,200,000.00	
122	31,125,000.00	20,500,000.00	46,437,500.00	21,324,400.00	46,100,000.00	
123	29,187,500.00	19,690,000.00	43,500,000.00	19,282,100.00	42,450,000.00	
124	27,875,000.00	18,765,000.00	44,937,500.00	20,543,500.00	40,700,000.00	
125	27,812,500.00	18,950,000.00	43,062,500.00	19,942,800.00	40,400,000.00	
126	26,562,500.00	17,500,000.00	41,031,250.00	19,342,100.00	38,400,000.00	
127	25,875,000.00	17,505,000.00	40,125,000.00	19,522,300.00	37,900,000.00	
128	24,562,500.00	17,550,000.00	39,062,500.00	18,260,900.00	37,950,000.00	
129	25,500,000.00	17,925,000.00	35,968,750.00	19,161,900.00	39,600,000.00	
130	25,125,000.00	17,565,000.00	34,812,500.00	17,840,400.00	38,200,000.00	
131	26,687,500.00	19,675,000.00	38,187,500.00	16,819,200.00	41,000,000.00	
132	27,187,500.00	20,850,000.00	41,406,250.00	15,557,800.00	43,200,000.00	
133	23,187,500.00	19,500,000.00	38,281,250.00	15,197,400.00	38,300,000.00	
134	22,250,000.00	18,420,000.00	35,843,750.00	15,738,000.00	33,900,000.00	
135	19,625,000.00	18,975,000.00	36,187,500.00	15,257,500.00	34,600,000.00	
136	20,812,500.00	18,645,000.00	32,750,000.00	16,038,400.00	34,300,000.00	
137	20,812,500.00	17,915,000.00	31,187,500.00	15,858,100.00	32,900,000.00	
138	20,750,000.00	17,910,000.00	34,468,750.00	16,999,500.00	33,500,000.00	
139	19,812,500.00	16,550,000.00	31,156,250.00	16,579,000.00	31,000,000.00	
140	19,875,000.00	15,615,000.00	32,468,750.00	15,978,300.00	31,100,000.00	
141	20,062,500.00	15,500,000.00	35,343,750.00	15,257,500.00	33,200,000.00	
142	19,625,000.00	16,580,000.00	31,812,500.00	15,557,800.00	34,000,000.00	
143	20,937,500.00	18,225,000.00	29,906,250.00	15,497,700.00	34,600,000.00	
144	22,250,000.00	18,005,000.00	33,875,000.00	16,038,400.00	36,150,000.00	
145	22,062,500.00	18,090,000.00	33,406,250.00	16,518,900.00	36,450,000.00	
146	20,312,500.00	18,005,000.00	31,937,500.00	15,798,100.00	36,250,000.00	
147	17,437,500.00	16,825,000.00	29,156,250.00	16,278,600.00	34,350,000.00	
148	17,062,500.00	16,300,000.00	26,968,750.00	15,137,300.00	33,050,000.00	
149	19,125,000.00	17,250,000.00	29,562,500.00	14,596,700.00	35,600,000.00	
150	18,437,500.00	17,375,000.00	29,843,750.00	15,798,100.00	35,800,000.00	
151	18,062,500.00	16,500,000.00	27,187,500.00	16,879,300.00	34,850,000.00	
152	18,187,500.00	15,710,000.00	27,312,500.00	16,759,200.00	33,262,480.00	
153	19,062,500.00	17,470,000.00	27,000,000.00	17,660,200.00	35,850,000.00	
154	17,375,000.00	16,405,000.00	26,812,500.00	16,518,900.00	32,900,000.00	
155	18,375,000.00	16,480,000.00	26,718,750.00	16,098,400.00	33,300,000.00	
156	18,875,000.00	18,000,000.00	27,593,750.00	16,398,800.00	37,200,000.00	
157	18,250,000.00	18,940,000.00	26,937,500.00	16,218,600.00	36,800,000.00	
158	17,240,000.00	18,790,000.00	25,030,000.00	17,299,800.00	34,500,000.00	
159	17,410,000.00	18,800,000.00	27,460,000.00	18,321,000.00	33,700,000.00	
160	15,850,000.00	17,215,000.00	23,750,000.00	18,080,700.00	31,700,000.00	



## Prices

	A	B	C	D	E	F	G
161	158	3/29/2001	32.5000	53.0500	45.5625	17.0000	40.7500
162	159	3/30/2001	34.9000	54.3800	43.5000	16.5000	40.1500
163	160	4/2/2001	34.0000	54.4900	40.0000	14.1094	37.1700
164	161	4/3/2001	30.8800	52.6000	40.1250	12.5625	33.9000
165	162	4/4/2001	29.5200	52.1100	37.8125	11.3125	35.1500
166	163	4/5/2001	34.9000	53.4700	42.2500	14.8125	39.7000
167	164	4/6/2001	34.0500	52.4500	40.0000	13.6875	39.3000
168	165	4/9/2001	35.8300	53.1000	38.8200	13.6200	39.4700
169	166	4/10/2001	41.3600	52.9700	42.7500	16.3800	40.0100
170	167	4/11/2001	40.7300	50.6000	46.0300	19.3900	41.2000
171	168	4/12/2001	41.0600	51.5000	49.4700	22.0100	42.2200
172	169	4/16/2001	40.8300	50.4100	47.9200	19.9900	43.3100
173	170	4/17/2001	41.1500	51.3000	47.5900	20.3400	43.9000
174	171	4/18/2001	45.9400	54.2800	53.0300	22.8600	49.0000
175	172	4/19/2001	48.0500	54.0500	58.7300	28.9200	49.9000
176	173	4/20/2001	45.9600	53.2900	56.3100	30.0000	48.6900
177	174	4/23/2001	42.9800	52.1600	52.7300	25.6000	47.6000
178	175	4/24/2001	42.7300	52.0000	51.7000	23.9800	47.2500
179	176	4/25/2001	44.6700	53.1000	53.1800	24.3000	49.5000
180	177	4/26/2001	44.6700	52.9800	50.8400	22.0000	49.5100
181	178	4/27/2001	45.6200	54.7400	53.8900	22.9500	49.9900
182	179	4/30/2001	44.9200	54.2500	54.6000	26.0200	50.5000
183	180	5/1/2001	44.0500	53.9400	55.0400	26.4600	51.9600
184	181	5/2/2001	42.8300	52.9600	54.6900	27.5400	51.6100
185	182	5/3/2001	40.6300	52.4600	52.6000	24.5400	50.6500
186	183	5/4/2001	41.3600	52.2500	51.5300	26.4900	52.2000
187	184	5/7/2001	41.1800	52.6500	50.7400	25.7200	52.1000
188	185	5/8/2001	42.0600	53.0000	52.6000	28.3400	51.9300
189	186	5/9/2001	41.5200	52.9200	51.0400	26.1000	52.0000
190	187	5/10/2001	40.2800	53.3900	51.0100	23.7900	52.4500
191	188	5/11/2001	39.8600	52.2900	51.7100	23.0200	51.6400
192	189	5/14/2001	39.1500	52.8000	49.6900	21.7400	51.6000
193	190	5/15/2001	38.7900	52.7500	49.8900	22.0800	50.7500
194	191	5/16/2001	41.0900	55.6000	54.1000	23.0400	53.0400
195	192	5/17/2001	43.6000	55.5400	53.9000	23.2800	53.8200
196	193	5/18/2001	42.5100	55.7200	55.0000	23.5100	54.4300
197	194	5/21/2001	45.4900	56.7800	57.5200	26.4900	56.6000
198	195	5/22/2001	46.2800	55.9200	56.5900	26.4500	56.1500
199	196	5/23/2001	44.4700	55.4500	52.9400	23.8200	55.2800
200	197	5/24/2001	45.4500	56.0400	54.4200	23.7700	54.2800

## Prices

	H	I	J	K	L	M	N
161	26.1875	63.1250	19.3400	54.7000	15.2500	26.9375	34.1250
162	29.3750	63.3125	20.8900	54.4500	15.8125	25.6875	36.1875
163	25.8750	61.5000	20.2100	53.7800	15.0625	24.0625	35.3125
164	22.1875	59.8125	17.4900	52.0200	13.7500	23.4375	30.6875
165	20.6875	58.0625	17.9700	51.1000	13.6875	22.1875	30.3750
166	27.1250	58.9375	20.5400	54.9100	14.9375	25.1875	34.8125
167	28.3750	58.9375	21.5700	54.0000	13.6250	24.8125	35.5000
168	29.1000	60.1200	20.8800	55.0900	14.4900	24.8900	37.9800
169	35.2000	59.2500	24.6000	57.2400	15.8600	26.2600	39.4500
170	32.8100	58.1100	25.4000	56.9800	17.4000	26.7400	39.1700
171	33.2700	61.7800	25.7200	56.7700	17.9800	27.9200	41.6300
172	31.1400	61.2900	24.2900	56.5900	17.2000	27.1100	40.8800
173	32.4500	62.3800	20.7000	57.7900	16.6600	26.3500	43.0500
174	36.7100	63.4300	24.8300	61.6000	17.9300	28.4700	45.7500
175	43.3700	65.0600	31.3400	63.5000	18.9100	30.4900	49.9900
176	44.3800	64.5400	36.7800	62.9500	19.1500	30.1200	50.6500
177	38.3000	63.7900	32.4000	60.5400	17.3300	29.3500	46.9500
178	37.9100	61.8900	33.4100	57.5000	16.2600	25.8500	44.5600
179	37.0000	63.5300	36.0000	57.4700	15.7300	26.9900	48.4000
180	35.6600	62.5400	33.7600	58.7400	15.2100	25.3200	46.0000
181	38.2500	64.9400	35.6200	57.3600	15.6000	26.0000	46.8700
182	40.8500	64.6600	37.9900	55.8000	16.9800	26.2400	50.4800
183	40.8800	64.1000	42.9600	56.7600	17.8000	25.7600	54.3100
184	42.2500	59.2300	49.9400	55.9300	20.0000	26.7300	53.7000
185	39.8600	56.7000	46.1400	54.8000	18.6600	24.9300	51.5100
186	35.9800	57.1300	47.6500	55.4900	19.6400	25.8400	52.3500
187	32.8900	56.2400	44.0200	55.0500	19.2500	25.9100	50.3400
188	34.9500	58.5200	46.4400	55.0000	20.3800	24.8300	52.5600
189	34.9800	59.9000	44.5300	55.0200	19.1300	24.6000	53.1400
190	33.5600	59.6000	40.8500	57.5900	18.8300	24.4000	54.3100
191	32.3700	59.7000	40.1800	56.9800	19.0500	24.4800	53.2500
192	32.9900	58.7500	40.0900	56.1400	18.5700	24.1900	55.2100
193	34.0400	58.9400	42.5000	56.4800	18.7400	24.4900	56.0500
194	37.7400	60.2800	47.2100	58.1300	20.0000	25.3800	57.8600
195	38.1000	63.4500	45.3600	60.2500	19.8600	25.8800	62.5500
196	38.7400	64.1200	45.9100	61.2200	20.2000	24.7900	62.6400
197	41.9100	64.8000	53.2600	63.6700	22.8700	25.8400	64.0400
198	40.6100	63.5600	52.3900	63.9800	23.4800	25.9400	64.2500
199	39.0100	60.3600	48.0200	62.7700	22.3600	26.8100	60.9000
200	40.6600	62.2800	49.1600	63.9600	22.9100	26.6700	63.2600

## Prices

	O	P	Q	R	S	T
161	45.2500	24.1600	14.5200	18.2600	35.1600	14.7000
162	41.5300	24.0000	14.9800	19.0000	35.0500	15.3700
163	36.2500	22.9300	15.3200	19.5000	35.7000	15.1900
164	36.2600	21.2500	13.2500	17.1500	32.7200	14.0800
165	34.6000	22.3000	13.6600	16.9400	30.1100	13.8600
166	38.4000	24.6000	14.7400	19.7500	32.8500	14.6800
167	36.8200	23.3400	13.8600	21.6000	31.4000	14.1400
168	35.8900	24.1700	14.0500	22.0000	32.1900	13.0400
169	38.1500	25.5000	14.9700	23.5000	34.8000	14.6500
170	41.6000	26.6200	15.5300	24.0100	35.7000	16.3100
171	46.4100	27.7200	15.8200	23.5600	35.7000	17.0900
172	44.5000	26.7500	15.9600	23.0000	35.7000	16.3400
173	42.9400	25.9500	16.2200	24.7300	36.2400	16.0400
174	47.3000	31.0000	17.9200	25.8900	37.5100	18.5800
175	47.9500	31.6000	20.3200	26.6800	36.9000	20.7100
176	46.5400	31.4500	19.7500	26.6500	37.4000	19.7100
177	43.3500	29.8800	17.1500	26.1100	37.1200	17.5700
178	40.0000	29.9500	16.9700	24.5100	37.3000	17.0800
179	42.6800	30.2500	17.2500	24.1000	38.9000	16.0500
180	42.4800	30.7000	16.9000	24.8900	39.2500	15.7800
181	44.0700	31.9400	17.1500	25.2500	39.8000	17.3800
182	45.3800	34.1900	16.1600	25.6300	40.9000	17.1200
183	43.7800	34.9600	16.0400	26.1600	40.8100	18.9800
184	43.1000	33.8700	17.1700	26.2600	39.4400	20.4400
185	41.4800	32.4000	16.4500	24.9400	38.4500	19.8000
186	41.8000	33.6400	17.0900	25.8000	37.5400	19.7500
187	42.9000	32.9000	16.8700	25.6300	38.6400	19.5400
188	41.8900	33.2500	17.0400	25.3600	37.5500	19.8600
189	41.5000	31.7800	17.0600	24.5700	38.0000	19.2600
190	40.0500	32.1900	16.3900	24.5900	37.9600	18.8800
191	40.3200	31.5100	15.9000	24.3500	37.4200	18.8500
192	40.7000	30.9600	16.0400	23.9700	37.9300	18.1100
193	39.1000	31.2500	15.9300	24.0000	37.6500	17.4500
194	39.2000	31.9500	16.4000	23.9500	37.0000	18.6700
195	41.0400	32.9600	16.1200	23.2000	37.8200	18.8200
196	40.0900	33.7000	16.2800	23.5000	38.6000	19.9700
197	42.6200	35.0100	18.1000	23.9000	38.6700	22.9600
198	40.8200	34.4000	17.5800	23.5500	38.5300	22.7600
199	40.2500	33.0300	16.8300	22.4600	37.6000	21.4900
200	40.2300	32.5100	17.3000	22.3000	37.0700	21.4600

## Prices

	U	V	W	X	Z	AB	AC
161	34.3900	43.0400	18.3210	36.9375	38.9500	138.0000	32.23
162	33.0000	46.2400	17.9606	35.1250	39.1500	137.0000	32.36
163	29.7200	47.4000	17.9606	33.1250	37.4000	134.0000	31.13
164	29.0000	39.8900	17.2397	31.4375	34.6600	133.0000	29.09
165	26.7500	39.4500	16.7592	30.3750	34.0500	132.0000	28.23
166	31.2500	47.1600	18.3210	33.2500	37.3100	131.0000	31.39
167	29.6100	44.8200	17.6602	32.1875	36.3000	130.0000	30.72
168	29.0000	48.3400	18.2705	31.4000	37.0500	127.0000	31.15
169	31.7600	57.3100	19.2604	35.0300	39.8000	126.0000	33.53
170	33.2500	58.7500	18.7511	39.2000	41.0000	125.0000	34.28
171	34.6200	60.7000	18.9144	41.1400	42.8000	124.0000	35.48
172	33.5000	54.6700	18.7318	40.2400	40.2500	120.0000	34.63
173	33.3000	57.5300	18.3666	40.9200	41.2500	119.0000	34.82
174	35.0000	56.5800	19.2316	46.0200	45.5500	118.0000	37.75
175	38.0200	64.2500	19.1163	50.0000	48.3000	117.0000	40.09
176	37.3000	67.3600	18.2993	48.4400	48.4000	116.0000	39.87
177	35.2200	59.1300	18.0591	44.8000	45.1500	113.0000	37.53
178	35.8000	56.9000	17.8284	43.8900	44.3000	112.0000	36.51
179	36.5700	58.7600	18.6357	46.1500	45.1000	111.0000	37.62
180	36.9200	55.4200	18.9721	43.4100	43.9500	110.0000	36.95
181	37.5400	58.0600	17.9822	45.8200	45.1500	109.0000	38.01
182	39.5000	59.6100	17.5401	47.4700	46.1500	106.0000	38.79
183	38.2500	66.0100	17.9437	48.0000	48.0500	105.0000	39.40
184	38.1400	72.1600	17.6554	48.2700	48.9800	104.0000	39.56
185	36.9500	69.4700	17.4055	45.8100	46.8000	103.0000	37.93
186	35.7000	71.9900	17.8765	45.0000	48.2000	102.0000	38.22
187	35.2300	67.3100	17.5881	44.3200	47.2000	99.0000	37.67
188	35.9400	67.7900	17.2806	45.1500	48.2000	98.0000	38.19
189	36.2500	66.3800	17.5785	43.3000	46.5500	97.0000	37.74
190	38.5000	65.1000	17.1172	43.4100	45.7700	96.0000	37.41
191	38.7300	62.9000	16.9346	43.1700	45.5500	95.0000	37.02
192	37.5200	60.9900	16.9730	41.8800	44.8200	92.0000	36.69
193	38.1500	61.8500	17.1652	41.9700	45.1500	91.0000	36.80
194	41.2100	68.0100	17.2421	44.1800	47.1500	90.0000	38.42
195	42.9400	69.2000	16.9538	44.9900	47.9000	89.0000	39.23
196	42.7000	73.8100	17.0115	45.3100	48.0400	88.0000	39.56
197	47.1900	80.0000	16.8673	49.7100	51.0500	85.0000	41.75
198	45.9000	76.0000	17.7419	49.2100	50.9000	84.0000	41.35
199	43.4000	73.9500	17.8668	45.4500	48.6500	83.0000	39.80
200	43.9200	77.7000	17.7707	44.8300	49.9000	82.0000	40.27

## Prices

	AD	AE	AF	AG	AH	AI
161	712,185,750	48,750,000.00	53,050,000.00	50,118,750.00	15,300,000.00	40,750,000.00
162	715,109,725	52,350,000.00	54,380,000.00	47,850,000.00	14,850,000.00	40,150,000.00
163	688,033,435	51,000,000.00	54,490,000.00	44,000,000.00	12,698,460.00	37,170,000.00
164	642,882,200	46,320,000.00	52,600,000.00	44,137,500.00	11,306,250.00	33,900,000.00
165	623,862,825	44,280,000.00	52,110,000.00	41,593,750.00	10,181,250.00	35,150,000.00
166	693,757,125	52,350,000.00	53,470,000.00	46,475,000.00	13,331,250.00	39,700,000.00
167	678,823,200	51,075,000.00	52,450,000.00	44,000,000.00	12,318,750.00	39,300,000.00
168	688,326,500	53,745,000.00	53,100,000.00	42,702,000.00	12,258,000.00	39,470,000.00
169	740,930,400	62,040,000.00	52,970,000.00	47,025,000.00	14,742,000.00	40,010,000.00
170	757,615,100	61,095,000.00	50,600,000.00	50,633,000.00	17,451,000.00	41,200,000.00
171	784,113,900	61,590,000.00	51,500,000.00	54,417,000.00	19,809,000.00	42,220,000.00
172	765,424,300	61,245,000.00	50,410,000.00	52,712,000.00	17,991,000.00	43,310,000.00
173	769,461,100	61,725,000.00	51,300,000.00	52,349,000.00	18,306,000.00	43,900,000.00
174	834,183,100	68,910,000.00	54,280,000.00	58,333,000.00	20,574,000.00	49,000,000.00
175	885,885,800	72,075,000.00	54,050,000.00	64,603,000.00	26,028,000.00	49,900,000.00
176	881,052,300	68,940,000.00	53,290,000.00	61,941,000.00	27,000,000.00	48,690,000.00
177	829,516,600	64,470,000.00	52,160,000.00	58,003,000.00	23,040,000.00	47,600,000.00
178	806,955,400	64,095,000.00	52,000,000.00	56,870,000.00	21,582,000.00	47,250,000.00
179	831,372,700	67,005,000.00	53,100,000.00	58,498,000.00	21,870,000.00	49,500,000.00
180	816,614,600	67,005,000.00	52,980,000.00	55,924,000.00	19,800,000.00	49,510,000.00
181	840,099,200	68,430,000.00	54,740,000.00	59,279,000.00	20,655,000.00	49,990,000.00
182	857,296,100	67,380,000.00	54,250,000.00	60,060,000.00	23,418,000.00	50,500,000.00
183	870,632,700	66,075,000.00	53,940,000.00	60,544,000.00	23,814,000.00	51,960,000.00
184	874,367,900	64,245,000.00	52,960,000.00	60,159,000.00	24,786,000.00	51,610,000.00
185	838,188,500	60,945,000.00	52,460,000.00	57,860,000.00	22,086,000.00	50,650,000.00
186	844,629,000	62,040,000.00	52,250,000.00	56,683,000.00	23,841,000.00	52,200,000.00
187	832,548,100	61,770,000.00	52,650,000.00	55,814,000.00	23,148,000.00	52,100,000.00
188	843,936,600	63,090,000.00	53,000,000.00	57,860,000.00	25,506,000.00	51,930,000.00
189	833,948,000	62,280,000.00	52,920,000.00	56,144,000.00	23,490,000.00	52,000,000.00
190	826,820,200	60,420,000.00	53,390,000.00	56,111,000.00	21,411,000.00	52,450,000.00
191	818,043,100	59,790,000.00	52,290,000.00	56,881,000.00	20,718,000.00	51,640,000.00
192	810,939,500	58,725,000.00	52,800,000.00	54,659,000.00	19,566,000.00	51,600,000.00
193	813,299,200	58,185,000.00	52,750,000.00	54,879,000.00	19,872,000.00	50,750,000.00
194	849,175,600	61,635,000.00	55,600,000.00	59,510,000.00	20,736,000.00	53,040,000.00
195	866,995,300	65,400,000.00	55,540,000.00	59,290,000.00	20,952,000.00	53,820,000.00
196	874,347,500	63,765,000.00	55,720,000.00	60,500,000.00	21,159,000.00	54,430,000.00
197	922,779,300	68,235,000.00	56,780,000.00	63,272,000.00	23,841,000.00	56,600,000.00
198	913,726,900	69,420,000.00	55,920,000.00	62,249,000.00	23,805,000.00	56,150,000.00
199	879,492,300	66,705,000.00	55,450,000.00	58,234,000.00	21,438,000.00	55,280,000.00
200	889,873,200	68,175,000.00	56,040,000.00	59,862,000.00	21,393,000.00	54,280,000.00

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Prices

	AJ	AK	AL	AM	AN	AO
161	23,568,750.00	56,812,500.00	17,406,000.00	51,965,000.00	12,962,500.00	40,406,250.00
162	26,437,500.00	56,981,250.00	18,801,000.00	51,727,500.00	13,440,625.00	38,531,250.00
163	23,287,500.00	55,350,000.00	18,189,000.00	51,091,000.00	12,803,125.00	36,093,750.00
164	19,968,750.00	53,831,250.00	15,741,000.00	49,419,000.00	11,687,500.00	35,156,250.00
165	18,618,750.00	52,256,250.00	16,173,000.00	48,545,000.00	11,634,375.00	33,281,250.00
166	24,412,500.00	53,043,750.00	18,486,000.00	52,164,500.00	12,696,875.00	37,781,250.00
167	25,537,500.00	53,043,750.00	19,413,000.00	51,300,000.00	11,581,250.00	37,218,750.00
168	26,190,000.00	54,108,000.00	18,792,000.00	52,335,500.00	12,316,500.00	37,335,000.00
169	31,680,000.00	53,325,000.00	22,140,000.00	54,378,000.00	13,481,000.00	39,390,000.00
170	29,529,000.00	52,299,000.00	22,860,000.00	54,131,000.00	14,790,000.00	40,110,000.00
171	29,943,000.00	55,602,000.00	23,148,000.00	53,931,500.00	15,283,000.00	41,880,000.00
172	28,026,000.00	55,161,000.00	21,861,000.00	53,760,500.00	14,620,000.00	40,665,000.00
173	29,205,000.00	56,142,000.00	18,630,000.00	54,900,500.00	14,161,000.00	39,525,000.00
174	33,039,000.00	57,087,000.00	22,347,000.00	58,520,000.00	15,240,500.00	42,705,000.00
175	39,033,000.00	58,554,000.00	28,206,000.00	60,325,000.00	16,073,500.00	45,735,000.00
176	39,942,000.00	58,086,000.00	33,102,000.00	59,802,500.00	16,277,500.00	45,180,000.00
177	34,470,000.00	57,411,000.00	29,160,000.00	57,513,000.00	14,730,500.00	44,025,000.00
178	34,119,000.00	55,701,000.00	30,069,000.00	54,625,000.00	13,821,000.00	38,775,000.00
179	33,300,000.00	57,177,000.00	32,400,000.00	54,596,500.00	13,370,500.00	40,485,000.00
180	32,094,000.00	56,286,000.00	30,384,000.00	55,803,000.00	12,928,500.00	37,980,000.00
181	34,425,000.00	58,446,000.00	32,058,000.00	54,492,000.00	13,260,000.00	39,000,000.00
182	36,765,000.00	58,194,000.00	34,191,000.00	53,010,000.00	14,433,000.00	39,360,000.00
183	36,792,000.00	57,690,000.00	38,664,000.00	53,922,000.00	15,130,000.00	38,640,000.00
184	38,025,000.00	53,307,000.00	44,946,000.00	53,133,500.00	17,000,000.00	40,095,000.00
185	35,874,000.00	51,030,000.00	41,526,000.00	52,060,000.00	15,861,000.00	37,395,000.00
186	32,382,000.00	51,417,000.00	42,885,000.00	52,715,500.00	16,694,000.00	38,760,000.00
187	29,601,000.00	50,616,000.00	39,618,000.00	52,297,500.00	16,362,500.00	38,865,000.00
188	31,455,000.00	52,668,000.00	41,796,000.00	52,250,000.00	17,323,000.00	37,245,000.00
189	31,482,000.00	53,910,000.00	40,077,000.00	52,269,000.00	16,260,500.00	36,900,000.00
190	30,204,000.00	53,640,000.00	36,765,000.00	54,710,500.00	16,005,500.00	36,600,000.00
191	29,133,000.00	53,730,000.00	36,162,000.00	54,131,000.00	16,192,500.00	36,720,000.00
192	29,691,000.00	52,875,000.00	36,081,000.00	53,333,000.00	15,784,500.00	36,285,000.00
193	30,636,000.00	53,046,000.00	38,250,000.00	53,656,000.00	15,929,000.00	36,735,000.00
194	33,966,000.00	54,252,000.00	42,489,000.00	55,223,500.00	17,000,000.00	38,070,000.00
195	34,290,000.00	57,105,000.00	40,824,000.00	57,237,500.00	16,881,000.00	38,820,000.00
196	34,866,000.00	57,708,000.00	41,319,000.00	58,159,000.00	17,170,000.00	37,185,000.00
197	37,719,000.00	58,320,000.00	47,934,000.00	60,486,500.00	19,439,500.00	38,760,000.00
198	36,549,000.00	57,204,000.00	47,151,000.00	60,781,000.00	19,958,000.00	38,910,000.00
199	35,109,000.00	54,324,000.00	43,218,000.00	59,631,500.00	19,006,000.00	40,215,000.00
200	36,594,000.00	56,052,000.00	44,244,000.00	60,762,000.00	19,473,500.00	40,005,000.00

## Prices

	AP	AQ	AR	AS	AT	AU
161	27,300,000.00	45,250,000.00	24,160,000.00	14,520,000.00	18,260,000.00	70,320,000.00
162	28,950,000.00	41,530,000.00	24,000,000.00	14,980,000.00	19,000,000.00	70,100,000.00
163	28,250,000.00	36,250,000.00	22,930,000.00	15,320,000.00	19,500,000.00	71,400,000.00
164	24,550,000.00	36,260,000.00	21,250,000.00	13,250,000.00	17,150,000.00	65,440,000.00
165	24,300,000.00	34,600,000.00	22,300,000.00	13,660,000.00	16,940,000.00	60,220,000.00
166	27,850,000.00	38,400,000.00	24,600,000.00	14,740,000.00	19,750,000.00	65,700,000.00
167	28,400,000.00	36,820,000.00	23,340,000.00	13,860,000.00	21,600,000.00	62,800,000.00
168	30,384,000.00	35,890,000.00	24,170,000.00	14,050,000.00	22,000,000.00	64,380,000.00
169	31,560,000.00	38,150,000.00	25,500,000.00	14,970,000.00	23,500,000.00	69,600,000.00
170	31,336,000.00	41,600,000.00	26,620,000.00	15,530,000.00	24,010,000.00	71,400,000.00
171	33,304,000.00	46,410,000.00	27,720,000.00	15,820,000.00	23,560,000.00	71,400,000.00
172	32,704,000.00	44,500,000.00	26,750,000.00	15,960,000.00	23,000,000.00	71,400,000.00
173	34,440,000.00	42,940,000.00	25,950,000.00	16,220,000.00	24,730,000.00	72,480,000.00
174	36,600,000.00	47,300,000.00	31,000,000.00	17,920,000.00	25,890,000.00	75,020,000.00
175	39,992,000.00	47,950,000.00	31,600,000.00	20,320,000.00	26,680,000.00	73,800,000.00
176	40,520,000.00	46,540,000.00	31,450,000.00	19,750,000.00	26,650,000.00	74,800,000.00
177	37,560,000.00	43,350,000.00	29,880,000.00	17,150,000.00	26,110,000.00	74,240,000.00
178	35,648,000.00	40,000,000.00	29,950,000.00	16,970,000.00	24,510,000.00	74,600,000.00
179	38,720,000.00	42,680,000.00	30,250,000.00	17,250,000.00	24,100,000.00	77,800,000.00
180	36,800,000.00	42,480,000.00	30,700,000.00	16,900,000.00	24,890,000.00	78,500,000.00
181	37,496,000.00	44,070,000.00	31,940,000.00	17,150,000.00	25,250,000.00	79,600,000.00
182	40,384,000.00	45,380,000.00	34,190,000.00	16,160,000.00	25,630,000.00	81,800,000.00
183	43,448,000.00	43,780,000.00	34,960,000.00	16,040,000.00	26,160,000.00	81,620,000.00
184	42,960,000.00	43,100,000.00	33,870,000.00	17,170,000.00	26,260,000.00	78,880,000.00
185	41,208,000.00	41,480,000.00	32,400,000.00	16,450,000.00	24,940,000.00	76,900,000.00
186	41,880,000.00	41,800,000.00	33,640,000.00	17,090,000.00	25,800,000.00	75,080,000.00
187	40,272,000.00	42,900,000.00	32,900,000.00	16,870,000.00	25,630,000.00	77,280,000.00
188	42,048,000.00	41,890,000.00	33,250,000.00	17,040,000.00	25,360,000.00	75,100,000.00
189	42,512,000.00	41,500,000.00	31,780,000.00	17,060,000.00	24,570,000.00	76,000,000.00
190	43,448,000.00	40,050,000.00	32,190,000.00	16,390,000.00	24,590,000.00	75,920,000.00
191	42,600,000.00	40,320,000.00	31,510,000.00	15,900,000.00	24,350,000.00	74,840,000.00
192	44,168,000.00	40,700,000.00	30,960,000.00	16,040,000.00	23,970,000.00	75,860,000.00
193	44,840,000.00	39,100,000.00	31,250,000.00	15,930,000.00	24,000,000.00	75,300,000.00
194	46,288,000.00	39,200,000.00	31,950,000.00	16,400,000.00	23,950,000.00	74,000,000.00
195	50,040,000.00	41,040,000.00	32,960,000.00	16,120,000.00	23,200,000.00	75,640,000.00
196	50,112,000.00	40,090,000.00	33,700,000.00	16,280,000.00	23,500,000.00	77,200,000.00
197	51,232,000.00	42,620,000.00	35,010,000.00	18,100,000.00	23,900,000.00	77,340,000.00
198	51,400,000.00	40,820,000.00	34,400,000.00	17,580,000.00	23,550,000.00	77,060,000.00
199	48,720,000.00	40,250,000.00	33,030,000.00	16,830,000.00	22,460,000.00	75,200,000.00
200	50,608,000.00	40,230,000.00	32,510,000.00	17,300,000.00	22,300,000.00	74,140,000.00

## Prices

	AV	AW	AX	AY	AZ	BB
161	14,700,000.00	17,195,000.00	21,520,000.00	18,321,000.00	29,550,000.00	
162	15,370,000.00	16,500,000.00	23,120,000.00	17,960,600.00	28,100,000.00	
163	15,190,000.00	14,860,000.00	23,700,000.00	17,960,600.00	26,500,000.00	
164	14,080,000.00	14,500,000.00	19,945,000.00	17,239,700.00	25,150,000.00	
165	13,860,000.00	13,375,000.00	19,725,000.00	16,759,200.00	24,300,000.00	
166	14,680,000.00	15,625,000.00	23,580,000.00	18,321,000.00	26,600,000.00	
167	14,140,000.00	14,805,000.00	22,410,000.00	17,660,200.00	25,750,000.00	
168	13,040,000.00	14,500,000.00	24,170,000.00	18,270,500.00	25,120,000.00	
169	14,650,000.00	15,880,000.00	28,655,000.00	19,260,400.00	28,024,000.00	
170	16,310,000.00	16,625,000.00	29,375,000.00	18,751,100.00	31,360,000.00	
171	17,090,000.00	17,310,000.00	30,350,000.00	18,914,400.00	32,912,000.00	
172	16,340,000.00	16,750,000.00	27,335,000.00	18,731,800.00	32,192,000.00	
173	16,040,000.00	16,650,000.00	28,765,000.00	18,366,600.00	32,736,000.00	
174	18,580,000.00	17,500,000.00	28,290,000.00	19,231,600.00	36,816,000.00	
175	20,710,000.00	19,010,000.00	32,125,000.00	19,116,300.00	40,000,000.00	
176	19,710,000.00	18,650,000.00	33,680,000.00	18,299,300.00	38,752,000.00	
177	17,570,000.00	17,610,000.00	29,565,000.00	18,059,100.00	35,840,000.00	
178	17,080,000.00	17,900,000.00	28,450,000.00	17,828,400.00	35,112,000.00	
179	16,050,000.00	18,285,000.00	29,380,000.00	18,635,700.00	36,920,000.00	
180	15,780,000.00	18,460,000.00	27,710,000.00	18,972,100.00	34,728,000.00	
181	17,380,000.00	18,770,000.00	29,030,000.00	17,982,200.00	36,656,000.00	
182	17,120,000.00	19,750,000.00	29,805,000.00	17,540,100.00	37,976,000.00	
183	18,980,000.00	19,125,000.00	33,005,000.00	17,943,700.00	38,400,000.00	
184	20,440,000.00	19,070,000.00	36,080,000.00	17,655,400.00	38,616,000.00	
185	19,800,000.00	18,475,000.00	34,735,000.00	17,405,500.00	36,648,000.00	
186	19,750,000.00	17,850,000.00	35,995,000.00	17,876,500.00	36,000,000.00	
187	19,540,000.00	17,615,000.00	33,655,000.00	17,588,100.00	35,456,000.00	
188	19,860,000.00	17,970,000.00	33,895,000.00	17,280,600.00	36,120,000.00	
189	19,260,000.00	18,125,000.00	33,190,000.00	17,578,500.00	34,640,000.00	
190	18,880,000.00	19,250,000.00	32,550,000.00	17,117,200.00	34,728,000.00	
191	18,850,000.00	19,365,000.00	31,450,000.00	16,934,600.00	34,536,000.00	
192	18,110,000.00	18,760,000.00	30,495,000.00	16,973,000.00	33,504,000.00	
193	17,450,000.00	19,075,000.00	30,925,000.00	17,165,200.00	33,576,000.00	
194	18,670,000.00	20,605,000.00	34,005,000.00	17,242,100.00	35,344,000.00	
195	18,820,000.00	21,470,000.00	34,600,000.00	16,953,800.00	35,992,000.00	
196	19,970,000.00	21,350,000.00	36,905,000.00	17,011,500.00	36,248,000.00	
197	22,960,000.00	23,595,000.00	40,000,000.00	16,867,300.00	39,768,000.00	
198	22,760,000.00	22,950,000.00	38,000,000.00	17,741,900.00	39,368,000.00	
199	21,490,000.00	21,700,000.00	36,975,000.00	17,866,800.00	36,360,000.00	
200	21,460,000.00	21,960,000.00	38,850,000.00	17,770,700.00	35,864,000.00	



## Prices

	A	B	C	D	E	F	G
201	198	5/25/2001	44.7000	56.0000	53.7100	22.7500	53.5300
202	199	5/29/2001	41.6800	55.4000	51.8500	20.6200	51.0000
203	200	5/30/2001	40.1200	54.8000	48.9500	18.6500	51.1000
204	201	5/31/2001	39.7700	53.7400	49.9300	18.0700	52.1900
205	202	6/1/2001	40.5800	54.6500	51.3200	18.6800	52.7500
206	203	6/4/2001	40.3300	55.2800	50.0600	17.9000	51.9500
207	204	6/5/2001	41.6800	56.9000	52.5100	20.0400	53.0100
208	205	6/6/2001	40.8700	56.1500	52.6600	19.0700	52.2800
209	206	6/7/2001	42.8500	55.5000	56.0200	21.0000	51.7000
210	207	6/8/2001	42.0300	54.6500	55.2700	19.2600	51.0500
211	208	6/11/2001	42.2900	54.6500	53.6200	17.9200	51.7900
212	209	6/12/2001	41.1800	54.1100	54.5000	17.8300	52.1000
213	210	6/13/2001	40.1800	53.3300	53.7700	17.0000	51.5500
214	211	6/14/2001	39.0100	51.5000	51.0000	16.5900	50.4100
215	212	6/15/2001	39.5600	52.0800	49.9100	15.4200	50.9000
216	213	6/18/2001	40.5400	52.2300	49.3400	14.4500	49.8000
217	214	6/19/2001	42.7500	52.3400	48.3100	13.5000	49.8400
218	215	6/20/2001	45.3000	52.1900	48.3600	14.0700	52.8000
219	216	6/21/2001	45.3100	52.2500	47.6200	14.0500	55.0000
220	217	6/22/2001	43.5800	51.6000	49.0500	13.8600	53.1000
221	218	6/25/2001	44.5200	51.7000	49.8700	14.2000	53.0000
222	219	6/26/2001	44.6500	52.2500	50.2100	14.7300	52.8500
223	220	6/27/2001	44.3500	51.6000	48.4700	14.9500	52.6800
224	221	6/28/2001	46.8600	51.7400	49.5700	16.3300	52.0800
225	222	6/29/2001	47.0000	49.7000	49.1000	17.2000	53.0000
226	223	7/2/2001	46.9500	51.6600	49.9600	16.8500	53.0600
227	224	7/3/2001	45.3000	51.8100	50.2300	17.0700	52.7600
228	225	7/5/2001	44.6600	51.6900	48.6800	15.8100	51.3600
229	226	7/6/2001	43.3600	51.1000	45.3000	14.5500	50.1100
230	227	7/9/2001	43.9800	52.8100	44.8200	14.8200	50.6900
231	228	7/10/2001	42.9500	52.4500	42.7800	13.9700	50.1800
232	229	7/11/2001	41.4400	52.0800	44.0600	14.6200	48.5000
233	230	7/12/2001	42.9400	53.8000	46.4300	16.2800	50.0500
234	231	7/13/2001	40.3700	53.4900	46.3600	16.6700	49.8100
235	232	7/16/2001	39.4300	53.0500	41.9500	15.6500	49.3600
236	233	7/17/2001	41.1700	53.7300	44.5700	17.4200	49.4500
237	234	7/18/2001	40.0500	53.1000	43.5600	17.0000	44.6500
238	235	7/19/2001	41.8800	53.9500	45.2900	16.8500	42.7800
239	236	7/20/2001	40.6900	53.3000	45.0500	15.6200	44.3100
240	237	7/23/2001	40.5900	51.8900	43.5800	15.8700	43.0000

## Prices

	H	I	J	K	L	M	N
201	40.0200	61.9900	46.4700	63.4000	22.0500	27.0000	62.2000
202	36.0900	60.5700	41.1600	63.5000	20.4600	25.6500	59.7500
203	34.2000	60.0800	36.9700	61.0000	19.0000	24.4100	59.8800
204	35.8800	60.3100	39.0000	60.9700	19.2600	24.3600	60.5200
205	35.6300	61.2300	38.8000	61.7600	18.8500	24.6100	61.2500
206	35.9700	62.9200	39.2500	63.1300	19.7300	25.0000	62.6600
207	38.9100	64.7500	43.4900	62.9900	21.5400	26.2200	64.7500
208	38.9200	63.2700	43.1600	63.3900	20.7600	25.2600	64.5700
209	40.4800	64.1400	46.8000	62.7100	21.8200	25.6100	64.9900
210	37.8800	63.9100	45.0900	62.3100	20.4900	25.6900	63.5500
211	35.9900	63.5200	46.0700	61.6500	20.3800	25.2600	62.7900
212	36.5100	64.9700	47.1700	61.4900	20.3700	26.1000	63.4900
213	35.0900	65.4000	41.9300	60.9100	19.0200	25.1900	61.8100
214	30.1800	64.2400	39.2700	58.5900	17.7400	25.0400	64.0600
215	30.8000	64.9300	39.2900	58.0000	16.6500	24.3200	65.1200
216	28.4400	64.5100	36.8300	55.0000	16.5000	23.9200	62.9800
217	29.0700	63.0500	35.6900	57.0000	16.6400	23.6700	63.1500
218	30.7400	64.1800	38.2500	58.5500	16.4000	23.4500	69.5000
219	31.9700	66.8000	40.0000	58.0600	17.6800	23.5000	69.9000
220	32.0700	59.8700	37.5400	58.9000	17.5200	23.4100	67.7900
221	31.0300	54.4100	36.0400	58.3000	18.5100	24.2500	71.0400
222	31.4000	54.2600	38.3100	58.9800	18.0200	25.0000	68.3600
223	30.9600	52.0300	39.0700	60.0100	17.9300	25.7400	68.6000
224	31.9600	53.6100	40.9200	61.7500	18.5800	26.4200	69.9600
225	30.7100	54.3600	43.9900	62.7000	18.2000	26.1500	68.4900
226	31.3600	52.9000	43.0800	63.3500	19.2200	26.8700	68.1700
227	30.0100	52.9600	44.0900	62.3900	19.1900	26.9100	69.1600
228	27.4200	52.5000	40.7700	62.0000	17.5800	26.2100	66.5500
229	26.1900	51.5000	31.8900	59.2500	16.7900	25.6300	65.2400
230	28.0200	52.5000	34.2100	60.4100	17.2500	26.7000	64.4800
231	24.6000	50.0300	31.1700	59.4800	16.2000	25.6100	60.2500
232	23.7500	50.6400	32.7300	58.2000	16.7000	25.9800	60.1800
233	26.0800	51.1900	35.9800	59.5800	17.8600	27.3700	66.9200
234	25.5100	51.4100	35.8400	58.9500	18.7400	27.9500	67.0100
235	23.8000	49.4500	34.0600	59.1600	17.7100	27.1200	65.8500
236	24.5200	52.3000	37.1000	59.5100	17.7900	28.7400	67.5000
237	21.5900	54.1400	30.1400	58.2700	17.1500	27.2000	66.5400
238	21.4500	53.0000	32.1000	56.8500	17.7600	28.3800	64.4000
239	23.0100	53.8000	31.3900	56.7500	17.9900	27.8900	66.8000
240	20.7100	52.1500	28.1100	55.9100	18.2700	26.5600	64.9600

## Prices

	O	P	Q	R	S	T
201	40.7000	31.6100	16.5100	22.5600	37.7500	20.4700
202	37.9800	30.3500	15.6100	22.4500	37.2900	18.6700
203	36.7400	28.5100	14.5100	21.0000	36.2900	16.2500
204	37.5000	29.2400	15.3000	22.0000	36.7400	16.4700
205	39.2000	28.7300	15.8600	21.7100	36.9100	16.6300
206	38.4100	29.2800	16.0600	22.6100	36.1500	16.0800
207	42.0000	30.9300	16.7600	23.0000	36.2300	17.0200
208	41.4700	30.0100	17.0000	21.8400	36.2100	17.6100
209	44.8500	31.1200	17.3300	22.1100	35.0000	18.0300
210	43.3200	29.8300	17.0100	21.5400	34.2600	17.0100
211	41.6100	28.7100	16.1900	21.4500	34.2500	16.8800
212	41.7500	23.2600	16.1390	21.1800	34.3600	17.2000
213	40.9000	23.5900	15.5000	21.4000	34.4000	16.2500
214	37.8000	22.1000	14.8500	20.7200	34.1000	15.5000
215	39.5000	22.4600	15.0000	20.0500	33.0000	15.1900
216	38.5000	22.1500	14.8400	19.3300	29.8200	14.4300
217	38.0200	22.3500	16.7600	19.4300	31.2700	14.6600
218	36.8400	22.6200	17.5200	20.6900	30.0200	14.1800
219	37.7100	22.8000	17.9000	20.9000	30.5000	14.3300
220	38.3800	23.3000	17.4800	22.1000	30.5000	14.4700
221	39.0200	22.4000	17.7700	21.7500	30.0400	15.0400
222	40.0000	21.9500	18.4400	22.1500	30.0300	14.9300
223	39.7400	21.4500	18.0400	22.1800	30.0700	14.9500
224	41.6000	21.5600	19.1800	23.5000	29.9700	15.6000
225	41.1000	22.1900	19.0000	24.1500	31.8700	15.7200
226	42.3000	22.4000	19.5800	24.1800	31.1500	15.7700
227	43.2500	22.2000	19.7700	24.7800	30.8100	15.9100
228	41.8900	20.3500	18.9300	24.2000	30.1000	15.1700
229	38.9000	19.0000	18.2100	23.8600	29.4000	13.6800
230	38.5000	18.5000	18.9100	23.7800	29.9900	14.8200
231	37.5900	18.4800	17.5900	23.3800	29.8400	14.0700
232	39.5000	18.0000	18.0000	22.9500	29.1400	13.9800
233	39.9900	19.1300	19.6600	24.0000	29.9500	15.3500
234	39.0100	18.3000	19.5400	23.9800	29.5200	15.6400
235	36.7500	17.1700	18.7000	23.8800	29.2200	15.0100
236	38.6700	17.4600	19.5000	24.0500	28.9600	14.5900
237	38.2500	17.0000	18.7800	23.0400	27.8100	13.9900
238	39.5600	19.5100	19.1700	25.4900	28.2300	14.4400
239	39.0900	19.2000	19.0700	24.7300	30.0000	15.0300
240	38.1000	19.0000	18.1300	25.8300	28.5500	14.4200

## Prices

	U	V	W	X	Z	AB	AC
201	44.4900	75.0000	17.4440	45.4900	48.9900	81.0000	39.82
202	42.2000	70.1700	17.5401	43.9000	46.1200	77.0000	38.06
203	39.4800	65.1600	16.8577	41.2400	44.4300	76.0000	36.44
204	39.8500	65.9100	17.1460	41.2500	44.7300	75.0000	36.86
205	41.7500	68.7900	17.3671	41.8200	46.0500	74.0000	37.39
206	40.4000	68.1200	17.2902	41.5900	45.8300	71.0000	37.43
207	43.4700	72.5100	17.6650	45.6100	47.8500	70.0000	39.11
208	43.2100	74.1800	17.6554	45.2200	47.4800	69.0000	38.73
209	46.6200	75.2400	17.7035	49.3700	48.7000	68.0000	39.75
210	45.0900	70.8100	17.8500	46.4100	47.3500	67.0000	38.70
211	43.0400	69.8600	17.5400	44.6200	46.0500	64.0000	38.15
212	43.9600	68.5800	17.0800	44.6100	45.8000	63.0000	38.04
213	42.3000	63.8000	16.7400	43.4000	44.5500	62.0000	37.10
214	39.9000	60.0200	16.1000	41.1800	42.2500	61.0000	35.72
215	40.2200	59.9600	15.8000	42.0900	42.6000	60.0000	35.67
216	40.0800	60.6300	14.9900	41.3900	42.0300	57.0000	34.70
217	38.1500	61.7000	15.0100	40.6400	41.8200	56.0000	34.94
218	35.0000	65.4900	14.4300	41.7800	42.7700	55.0000	35.70
219	34.2800	63.8500	14.8100	42.4900	43.3500	54.0000	36.15
220	34.9000	64.1400	14.2900	41.0700	43.2500	53.0000	35.59
221	34.7400	61.4400	13.9600	43.7100	43.3600	50.0000	35.56
222	34.6700	63.6900	14.0700	43.8600	43.5100	49.0000	35.82
223	33.5000	64.8400	14.1800	39.9300	43.7900	48.0000	35.52
224	34.8100	66.6000	14.3000	41.1600	44.3500	47.0000	36.50
225	35.0000	66.5300	14.2000	41.2400	45.7000	46.0000	36.73
226	36.3200	65.2900	14.8100	41.5100	45.4500	43.0000	36.95
227	36.9900	65.5100	14.4700	41.7900	45.6400	42.0000	36.90
228	35.9000	62.2600	14.2800	40.1100	43.4500	40.0000	35.70
229	32.4000	57.0100	13.8400	37.6600	41.6500	39.0000	33.94
230	32.0800	56.5000	14.2700	37.4500	42.0100	36.0000	34.48
231	30.4300	49.9500	14.2400	35.1600	40.5000	35.0000	33.13
232	31.0000	51.0000	14.1600	37.3300	41.0000	34.0000	33.17
233	34.3000	53.3500	14.2400	40.6300	43.6000	33.0000	34.88
234	33.7600	53.0500	14.5000	40.9000	43.1500	32.0000	34.61
235	31.2000	47.1600	14.5900	37.8900	42.3500	29.0000	33.35
236	32.7900	50.4200	14.6300	40.6200	43.3000	28.0000	34.47
237	31.5000	37.0800	14.2800	39.4200	41.6500	27.0000	32.90
238	33.2000	36.3500	14.1900	40.8700	42.6400	26.0000	33.48
239	32.9000	37.0200	13.8300	37.9000	41.6500	25.0000	33.50
240	32.0400	36.7600	13.9800	36.5800	40.6100	22.0000	32.56

## Prices

	AD	AE	AF	AG	AH	AI
201	879,931,500	67,050,000.00	56,000,000.00	59,081,000.00	20,475,000.00	53,530,000.00
202	841,027,100	62,520,000.00	55,400,000.00	57,035,000.00	18,558,000.00	51,000,000.00
203	805,213,700	60,180,000.00	54,800,000.00	53,845,000.00	16,785,000.00	51,100,000.00
204	814,706,500	59,655,000.00	53,740,000.00	54,923,000.00	16,263,000.00	52,190,000.00
205	826,280,600	60,870,000.00	54,650,000.00	56,452,000.00	16,812,000.00	52,750,000.00
206	827,161,200	60,495,000.00	55,280,000.00	55,066,000.00	16,110,000.00	51,950,000.00
207	864,254,500	62,520,000.00	56,900,000.00	57,761,000.00	18,036,000.00	53,010,000.00
208	855,927,900	61,305,000.00	56,150,000.00	57,926,000.00	17,163,000.00	52,280,000.00
209	878,373,000	64,275,000.00	55,500,000.00	61,622,000.00	18,900,000.00	51,700,000.00
210	855,212,000	63,045,000.00	54,650,000.00	60,797,000.00	17,334,000.00	51,050,000.00
211	843,045,500	63,435,000.00	54,650,000.00	58,982,000.00	16,128,000.00	51,790,000.00
212	840,721,000	61,770,000.00	54,110,000.00	59,950,000.00	16,047,000.00	52,100,000.00
213	819,989,500	60,270,000.00	53,330,000.00	59,147,000.00	15,300,000.00	51,550,000.00
214	789,498,500	58,515,000.00	51,500,000.00	56,100,000.00	14,931,000.00	50,410,000.00
215	788,207,500	59,340,000.00	52,080,000.00	54,901,000.00	13,878,000.00	50,900,000.00
216	766,807,000	60,810,000.00	52,230,000.00	54,274,000.00	13,005,000.00	49,800,000.00
217	772,151,000	64,125,000.00	52,340,000.00	53,141,000.00	12,150,000.00	49,840,000.00
218	788,978,500	67,950,000.00	52,190,000.00	53,196,000.00	12,663,000.00	52,800,000.00
219	798,997,000	67,965,000.00	52,250,000.00	52,382,000.00	12,645,000.00	55,000,000.00
220	786,621,000	65,370,000.00	51,600,000.00	53,955,000.00	12,474,000.00	53,100,000.00
221	785,852,500	66,780,000.00	51,700,000.00	54,857,000.00	12,780,000.00	53,000,000.00
222	791,540,000	66,975,000.00	52,250,000.00	55,231,000.00	13,257,000.00	52,850,000.00
223	784,965,000	66,525,000.00	51,600,000.00	53,317,000.00	13,455,000.00	52,680,000.00
224	806,541,500	70,290,000.00	51,740,000.00	54,527,000.00	14,697,000.00	52,080,000.00
225	811,753,000	70,500,000.00	49,700,000.00	54,010,000.00	15,480,000.00	53,000,000.00
226	816,585,500	70,425,000.00	51,660,000.00	54,956,000.00	15,165,000.00	53,060,000.00
227	815,447,000	67,950,000.00	51,810,000.00	55,253,000.00	15,363,000.00	52,760,000.00
228	789,024,000	66,990,000.00	51,690,000.00	53,548,000.00	14,229,000.00	51,360,000.00
229	750,116,000	65,040,000.00	51,100,000.00	49,830,000.00	13,095,000.00	50,110,000.00
230	762,063,000	65,970,000.00	52,810,000.00	49,302,000.00	13,338,000.00	50,690,000.00
231	732,145,000	64,425,000.00	52,450,000.00	47,058,000.00	12,573,000.00	50,180,000.00
232	733,105,000	62,160,000.00	52,080,000.00	48,466,000.00	13,158,000.00	48,500,000.00
233	770,882,000	64,410,000.00	53,800,000.00	51,073,000.00	14,652,000.00	50,050,000.00
234	764,937,500	60,555,000.00	53,490,000.00	50,996,000.00	15,003,000.00	49,810,000.00
235	737,011,500	59,145,000.00	53,050,000.00	46,145,000.00	14,085,000.00	49,360,000.00
236	761,855,000	61,755,000.00	53,730,000.00	49,027,000.00	15,678,000.00	49,450,000.00
237	727,076,000	60,075,000.00	53,100,000.00	47,916,000.00	15,300,000.00	44,650,000.00
238	739,913,500	62,820,000.00	53,950,000.00	49,819,000.00	15,165,000.00	42,780,000.00
239	740,347,000	61,035,000.00	53,300,000.00	49,555,000.00	14,058,000.00	44,310,000.00
240	719,545,000	60,885,000.00	51,890,000.00	47,938,000.00	14,283,000.00	43,000,000.00

## Prices

	AJ	AK	AL	AM	AN	AO
201	36,018,000.00	55,791,000.00	41,823,000.00	60,230,000.00	18,742,500.00	40,500,000.00
202	32,481,000.00	54,513,000.00	37,044,000.00	60,325,000.00	17,391,000.00	38,475,000.00
203	30,780,000.00	54,072,000.00	33,273,000.00	57,950,000.00	16,150,000.00	36,615,000.00
204	32,292,000.00	54,279,000.00	35,100,000.00	57,921,500.00	16,371,000.00	36,540,000.00
205	32,067,000.00	55,107,000.00	34,920,000.00	58,672,000.00	16,022,500.00	36,915,000.00
206	32,373,000.00	56,628,000.00	35,325,000.00	59,973,500.00	16,770,500.00	37,500,000.00
207	35,019,000.00	58,275,000.00	39,141,000.00	59,840,500.00	18,309,000.00	39,330,000.00
208	35,028,000.00	56,943,000.00	38,844,000.00	60,220,500.00	17,646,000.00	37,890,000.00
209	36,432,000.00	57,726,000.00	42,120,000.00	59,574,500.00	18,547,000.00	38,415,000.00
210	34,092,000.00	57,519,000.00	40,581,000.00	59,194,500.00	17,416,500.00	38,535,000.00
211	32,391,000.00	57,168,000.00	41,463,000.00	58,567,500.00	17,323,000.00	37,890,000.00
212	32,859,000.00	58,473,000.00	42,453,000.00	58,415,500.00	17,314,500.00	39,150,000.00
213	31,581,000.00	58,860,000.00	37,737,000.00	57,864,500.00	16,167,000.00	37,785,000.00
214	27,162,000.00	57,816,000.00	35,343,000.00	55,660,500.00	15,079,000.00	37,560,000.00
215	27,720,000.00	58,437,000.00	35,361,000.00	55,100,000.00	14,152,500.00	36,480,000.00
216	25,596,000.00	58,059,000.00	33,147,000.00	52,250,000.00	14,025,000.00	35,880,000.00
217	26,163,000.00	56,745,000.00	32,121,000.00	54,150,000.00	14,144,000.00	35,505,000.00
218	27,666,000.00	57,762,000.00	34,425,000.00	55,622,500.00	13,940,000.00	35,175,000.00
219	28,773,000.00	60,120,000.00	36,000,000.00	55,157,000.00	15,028,000.00	35,250,000.00
220	28,863,000.00	53,883,000.00	33,786,000.00	55,955,000.00	14,892,000.00	35,115,000.00
221	27,927,000.00	48,969,000.00	32,436,000.00	55,385,000.00	15,733,500.00	36,375,000.00
222	28,260,000.00	48,834,000.00	34,479,000.00	56,031,000.00	15,317,000.00	37,500,000.00
223	27,864,000.00	46,827,000.00	35,163,000.00	57,009,500.00	15,240,500.00	38,610,000.00
224	28,764,000.00	48,249,000.00	36,828,000.00	58,662,500.00	15,793,000.00	39,630,000.00
225	27,639,000.00	48,924,000.00	39,591,000.00	59,565,000.00	15,470,000.00	39,225,000.00
226	28,224,000.00	47,610,000.00	38,772,000.00	60,182,500.00	16,337,000.00	40,305,000.00
227	27,009,000.00	47,664,000.00	39,681,000.00	59,270,500.00	16,311,500.00	40,365,000.00
228	24,678,000.00	47,250,000.00	36,693,000.00	58,900,000.00	14,943,000.00	39,315,000.00
229	23,571,000.00	46,350,000.00	28,701,000.00	56,287,500.00	14,271,500.00	38,445,000.00
230	25,218,000.00	47,250,000.00	30,789,000.00	57,389,500.00	14,662,500.00	40,050,000.00
231	22,140,000.00	45,027,000.00	28,053,000.00	56,506,000.00	13,770,000.00	38,415,000.00
232	21,375,000.00	45,576,000.00	29,457,000.00	55,290,000.00	14,195,000.00	38,970,000.00
233	23,472,000.00	46,071,000.00	32,382,000.00	56,601,000.00	15,181,000.00	41,055,000.00
234	22,959,000.00	46,269,000.00	32,256,000.00	56,002,500.00	15,929,000.00	41,925,000.00
235	21,420,000.00	44,505,000.00	30,654,000.00	56,202,000.00	15,053,500.00	40,680,000.00
236	22,068,000.00	47,070,000.00	33,390,000.00	56,534,500.00	15,121,500.00	43,110,000.00
237	19,431,000.00	48,726,000.00	27,126,000.00	55,356,500.00	14,577,500.00	40,800,000.00
238	19,305,000.00	47,700,000.00	28,890,000.00	54,007,500.00	15,096,000.00	42,570,000.00
239	20,709,000.00	48,420,000.00	28,251,000.00	53,912,500.00	15,291,500.00	41,835,000.00
240	18,639,000.00	46,935,000.00	25,299,000.00	53,114,500.00	15,529,500.00	39,840,000.00

## Prices

	AP	AQ	AR	AS	AT	AU
201	49,760,000.00	40,700,000.00	31,610,000.00	16,510,000.00	22,560,000.00	75,500,000.00
202	47,800,000.00	37,980,000.00	30,350,000.00	15,610,000.00	22,450,000.00	74,580,000.00
203	47,904,000.00	36,740,000.00	28,510,000.00	14,510,000.00	21,000,000.00	72,580,000.00
204	48,416,000.00	37,500,000.00	29,240,000.00	15,300,000.00	22,000,000.00	73,480,000.00
205	49,000,000.00	39,200,000.00	28,730,000.00	15,860,000.00	21,710,000.00	73,820,000.00
206	50,128,000.00	38,410,000.00	29,280,000.00	16,060,000.00	22,610,000.00	72,300,000.00
207	51,800,000.00	42,000,000.00	30,930,000.00	16,760,000.00	23,000,000.00	72,460,000.00
208	51,656,000.00	41,470,000.00	30,010,000.00	17,000,000.00	21,840,000.00	72,420,000.00
209	51,992,000.00	44,850,000.00	31,120,000.00	17,330,000.00	22,110,000.00	70,000,000.00
210	50,840,000.00	43,320,000.00	29,830,000.00	17,010,000.00	21,540,000.00	68,520,000.00
211	50,232,000.00	41,610,000.00	28,710,000.00	16,190,000.00	21,450,000.00	68,500,000.00
212	50,792,000.00	41,750,000.00	23,260,000.00	16,139,000.00	21,180,000.00	68,720,000.00
213	49,448,000.00	40,900,000.00	23,590,000.00	15,500,000.00	21,400,000.00	68,800,000.00
214	51,248,000.00	37,800,000.00	22,100,000.00	14,850,000.00	20,720,000.00	68,200,000.00
215	52,096,000.00	39,500,000.00	22,460,000.00	15,000,000.00	20,050,000.00	66,000,000.00
216	50,384,000.00	38,500,000.00	22,150,000.00	14,840,000.00	19,330,000.00	59,640,000.00
217	50,520,000.00	38,020,000.00	22,350,000.00	16,760,000.00	19,430,000.00	62,540,000.00
218	55,600,000.00	36,840,000.00	22,620,000.00	17,520,000.00	20,690,000.00	60,040,000.00
219	55,920,000.00	37,710,000.00	22,800,000.00	17,900,000.00	20,900,000.00	61,000,000.00
220	54,232,000.00	38,380,000.00	23,300,000.00	17,480,000.00	22,100,000.00	61,000,000.00
221	56,832,000.00	39,020,000.00	22,400,000.00	17,770,000.00	21,750,000.00	60,080,000.00
222	54,688,000.00	40,000,000.00	21,950,000.00	18,440,000.00	22,150,000.00	60,060,000.00
223	54,880,000.00	39,740,000.00	21,450,000.00	18,040,000.00	22,180,000.00	60,140,000.00
224	55,968,000.00	41,600,000.00	21,560,000.00	19,180,000.00	23,500,000.00	59,940,000.00
225	54,792,000.00	41,100,000.00	22,190,000.00	19,000,000.00	24,150,000.00	63,740,000.00
226	54,536,000.00	42,300,000.00	22,400,000.00	19,580,000.00	24,180,000.00	62,300,000.00
227	55,328,000.00	43,250,000.00	22,200,000.00	19,770,000.00	24,780,000.00	61,620,000.00
228	53,240,000.00	41,890,000.00	20,350,000.00	18,930,000.00	24,200,000.00	60,200,000.00
229	52,192,000.00	38,900,000.00	19,000,000.00	18,210,000.00	23,860,000.00	58,800,000.00
230	51,584,000.00	38,500,000.00	18,500,000.00	18,910,000.00	23,780,000.00	59,980,000.00
231	48,200,000.00	37,590,000.00	18,480,000.00	17,590,000.00	23,380,000.00	59,680,000.00
232	48,144,000.00	39,500,000.00	18,000,000.00	18,000,000.00	22,950,000.00	58,280,000.00
233	53,536,000.00	39,990,000.00	19,130,000.00	19,660,000.00	24,000,000.00	59,900,000.00
234	53,608,000.00	39,010,000.00	18,300,000.00	19,540,000.00	23,980,000.00	59,040,000.00
235	52,680,000.00	36,750,000.00	17,170,000.00	18,700,000.00	23,880,000.00	58,440,000.00
236	54,000,000.00	38,670,000.00	17,460,000.00	19,500,000.00	24,050,000.00	57,920,000.00
237	53,232,000.00	38,250,000.00	17,000,000.00	18,780,000.00	23,040,000.00	55,620,000.00
238	51,520,000.00	39,560,000.00	19,510,000.00	19,170,000.00	25,490,000.00	56,460,000.00
239	53,440,000.00	39,090,000.00	19,200,000.00	19,070,000.00	24,730,000.00	60,000,000.00
240	51,968,000.00	38,100,000.00	19,000,000.00	18,130,000.00	25,830,000.00	57,100,000.00

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Prices

	AV	AW	AX	AY	AZ	BB
201	20,470,000.00	22,245,000.00	37,500,000.00	17,444,000.00	36,392,000.00	
202	18,670,000.00	21,100,000.00	35,085,000.00	17,540,100.00	35,120,000.00	
203	16,250,000.00	19,740,000.00	32,580,000.00	16,857,700.00	32,992,000.00	
204	16,470,000.00	19,925,000.00	32,955,000.00	17,146,000.00	33,000,000.00	
205	16,630,000.00	20,875,000.00	34,395,000.00	17,367,100.00	33,456,000.00	
206	16,080,000.00	20,200,000.00	34,060,000.00	17,290,200.00	33,272,000.00	
207	17,020,000.00	21,735,000.00	36,255,000.00	17,665,000.00	36,488,000.00	
208	17,610,000.00	21,605,000.00	37,090,000.00	17,655,400.00	36,176,000.00	
209	18,030,000.00	23,310,000.00	37,620,000.00	17,703,500.00	39,496,000.00	
210	17,010,000.00	22,545,000.00	35,405,000.00	17,850,000.00	37,128,000.00	
211	16,880,000.00	21,520,000.00	34,930,000.00	17,540,000.00	35,696,000.00	
212	17,200,000.00	21,980,000.00	34,290,000.00	17,080,000.00	35,688,000.00	
213	16,250,000.00	21,150,000.00	31,900,000.00	16,740,000.00	34,720,000.00	
214	15,500,000.00	19,950,000.00	30,010,000.00	16,100,000.00	32,944,000.00	
215	15,190,000.00	20,110,000.00	29,980,000.00	15,800,000.00	33,672,000.00	
216	14,430,000.00	20,040,000.00	30,315,000.00	14,990,000.00	33,112,000.00	
217	14,660,000.00	19,075,000.00	30,850,000.00	15,010,000.00	32,512,000.00	
218	14,180,000.00	17,500,000.00	32,745,000.00	14,430,000.00	33,424,000.00	
219	14,330,000.00	17,140,000.00	31,925,000.00	14,810,000.00	33,992,000.00	
220	14,470,000.00	17,450,000.00	32,070,000.00	14,290,000.00	32,856,000.00	
221	15,040,000.00	17,370,000.00	30,720,000.00	13,960,000.00	34,968,000.00	
222	14,930,000.00	17,335,000.00	31,845,000.00	14,070,000.00	35,088,000.00	
223	14,950,000.00	16,750,000.00	32,420,000.00	14,180,000.00	31,944,000.00	
224	15,600,000.00	17,405,000.00	33,300,000.00	14,300,000.00	32,928,000.00	
225	15,720,000.00	17,500,000.00	33,265,000.00	14,200,000.00	32,992,000.00	
226	15,770,000.00	18,160,000.00	32,645,000.00	14,810,000.00	33,208,000.00	
227	15,910,000.00	18,495,000.00	32,755,000.00	14,470,000.00	33,432,000.00	
228	15,170,000.00	17,950,000.00	31,130,000.00	14,280,000.00	32,088,000.00	
229	13,680,000.00	16,200,000.00	28,505,000.00	13,840,000.00	30,128,000.00	
230	14,820,000.00	16,040,000.00	28,250,000.00	14,270,000.00	29,960,000.00	
231	14,070,000.00	15,215,000.00	24,975,000.00	14,240,000.00	28,128,000.00	
232	13,980,000.00	15,500,000.00	25,500,000.00	14,160,000.00	29,864,000.00	
233	15,350,000.00	17,150,000.00	26,675,000.00	14,240,000.00	32,504,000.00	
234	15,640,000.00	16,880,000.00	26,525,000.00	14,500,000.00	32,720,000.00	
235	15,010,000.00	15,600,000.00	23,580,000.00	14,590,000.00	30,312,000.00	
236	14,590,000.00	16,395,000.00	25,210,000.00	14,630,000.00	32,496,000.00	
237	13,990,000.00	15,750,000.00	18,540,000.00	14,280,000.00	31,536,000.00	
238	14,440,000.00	16,600,000.00	18,175,000.00	14,190,000.00	32,696,000.00	
239	15,030,000.00	16,450,000.00	18,510,000.00	13,830,000.00	30,320,000.00	
240	14,420,000.00	16,020,000.00	18,380,000.00	13,980,000.00	29,264,000.00	



## Prices

	A	B	C	D	E	F	G
241	238	7/24/2001	39.9800	51.2500	42.9500	15.4000	42.7000
242	239	7/25/2001	41.9700	51.6000	43.7800	15.0500	43.7500
243	240	7/26/2001	43.0000	51.0400	45.1800	15.9500	44.9100
244	241	7/27/2001	43.0600	51.0000	46.2600	16.5800	45.1400
245	242	7/30/2001	40.5400	50.8500	46.5900	16.9300	45.1500
246	243	7/31/2001	37.4900	50.9500	45.8600	17.1400	45.4500
247	244	8/1/2001	38.6100	49.9900	48.3000	18.6900	46.0800
248	245	8/2/2001	38.5500	48.3400	50.0000	19.1700	47.0000
249	246	8/3/2001	37.9400	46.9400	49.6000	18.8200	46.8800
250	247	8/6/2001	36.7600	47.9500	48.7300	18.9400	46.0000
251	248	8/7/2001	34.4200	48.2400	46.8000	18.2800	46.0000
252	249	8/8/2001	34.0600	48.1100	44.7400	16.5900	45.0800
253	250	8/9/2001	34.7700	48.7000	44.8500	16.4300	44.8600
254	251	8/10/2001	34.0500	48.4900	44.4800	16.1600	44.3000
255	252	8/13/2001	35.8500	48.2500	44.8400	16.8000	42.9900
256	253	8/14/2001	34.5000	48.6000	43.6500	16.5800	39.6500
257							
258							
259			0.896115528	0.303259418	0.818425604	1.258895903	0.622811817
260							
261							
262			0.003186599	0.000364946	0.002658018	0.006288964	0.001539264
263							
264							
265							
266							
267			-0.01241	0.00215	0.03932	0.00623	0.02791
268			-0.03548	0.00215	0.03938	0.02149	0.01818
269			0.07426	-0.02060	0.03714	0.02845	-0.00565
270			-0.01869	0.03127	-0.00074	0.02766	-0.00568
271			-0.02217	0.00424	-0.03024	-0.02177	0.03470
272			0.01962	0.00211	0.00688	0.03815	0.01637
273			0.03071	-0.00847	0.04107	0.06527	0.01717
274			0.02690	0.00000	0.00146	0.00528	0.02105
275			-0.00484	-0.00426	-0.01028	-0.00727	0.00000
276			0.01157	0.02532	-0.01787	-0.02551	-0.01999
277			0.00954	-0.01152	-0.02229	0.06196	-0.00426
278			-0.01579	-0.00422	-0.00812	0.01081	0.00956
279			0.00337	0.00981	0.02270	0.02621	-0.00318
280			0.04005	0.01114	-0.01753	0.00614	-0.02035
281			-0.01536	0.01542	-0.00443	-0.07300	-0.00651

## Prices

	H	I	J	K	L	M	N
241	21.1800	50.9500	29.1800	55.1100	18.3800	26.6100	61.7200
242	19.9000	52.8800	28.9700	56.0000	18.7000	28.0100	61.6200
243	20.5500	54.1000	32.7000	59.3000	19.3800	27.8700	64.8300
244	21.5300	53.6000	31.6800	59.9000	19.0600	27.4600	63.6000
245	21.9000	53.9000	31.9800	59.4000	18.8900	27.4600	61.0400
246	22.0500	56.6900	32.9100	58.6000	19.2200	26.9300	62.5700
247	23.6600	57.3700	37.7000	59.0000	20.3000	27.1800	61.6200
248	24.0500	57.1200	38.0800	60.1500	20.2500	28.4300	60.8000
249	22.9500	57.4900	36.5900	57.7600	20.0500	28.0700	64.3000
250	22.5800	58.6000	38.0100	57.8500	19.5400	27.8400	63.5000
251	22.5500	57.8900	37.9400	57.4600	19.2600	27.7100	64.3000
252	19.7900	56.3100	33.7000	57.9700	17.9800	26.6400	62.3900
253	20.2200	56.9600	33.6900	57.1500	18.2900	26.6400	62.8400
254	18.5000	57.6000	32.7900	56.8900	18.3300	26.9100	61.0900
255	18.0600	58.5700	34.9300	57.1100	18.2100	27.0200	60.7300
256	18.6000	57.7400	32.1600	56.3700	17.6500	26.5700	61.3700
257							
258	Annualized Stdev of Lognormal Returns on I						
259	1.239688183	0.562586647	1.208967716	0.525961936	0.84502788	0.765520435	1.022816628
260							
261	Variance of Lognormal Returns on Indiv						
262	0.006098519	0.001255967	0.005800012	0.001097762	0.00283362	0.002325482	0.004151404
263							
264							
265							
266	LN Returns						
267	-0.03147	0.03005	-0.01835	0.01809	-0.02056	0.03679	0.07374
268	0.15379	0.03901	-0.02881	-0.00825	-0.00198	0.00980	0.10295
269	0.01631	0.00355	0.07436	0.00075	0.00593	0.01773	0.09234
270	-0.06116	-0.04349	-0.00889	0.00899	0.00098	-0.00963	-0.13679
271	-0.01910	0.01562	0.00238	-0.02568	0.03101	0.00000	0.02025
272	0.05182	0.01538	0.01561	-0.06072	-0.01055	-0.03446	0.01107
273	0.03490	0.01779	0.00554	-0.00163	0.03599	0.03284	0.01855
274	-0.00107	-0.00908	0.01500	-0.04497	-0.01029	0.00805	0.05980
275	0.02333	0.01436	-0.02993	0.03515	-0.01515	-0.00966	0.01315
276	0.00000	0.02169	-0.02994	0.00819	0.00855	0.02240	0.01199
277	0.03704	-0.00949	0.01897	0.01458	0.00754	0.02654	-0.02922
278	0.02592	-0.04883	0.06383	-0.00645	0.00000	-0.01553	-0.00102
279	0.06939	0.00635	0.01085	-0.07038	0.03052	0.08831	0.01524
280	0.03873	-0.00908	0.01674	-0.04892	-0.00091	-0.01298	0.01401
281	-0.03232	-0.03057	-0.00710	-0.06984	-0.03809	-0.04908	0.07098

## Prices

	O	P	Q	R	S	T
241	37.8400	19.2000	18.2100	25.2600	27.0500	14.9000
242	38.3800	19.6100	19.2600	25.7400	27.4000	15.5300
243	40.7600	20.5000	19.4100	25.0000	28.0100	16.0900
244	41.2500	21.2000	19.0600	26.9000	27.9000	16.2900
245	41.3600	21.6300	18.6700	26.3600	27.2000	15.5200
246	42.0000	21.8100	18.0800	25.9200	26.0000	16.2900
247	43.7000	21.8600	18.3200	26.2500	25.2100	17.3500
248	44.9000	22.6200	18.3100	26.0500	23.1000	18.1700
249	43.4500	22.2100	18.0000	25.4300	24.4000	17.7200
250	42.0100	21.7500	17.4600	24.5300	24.2900	17.1300
251	40.9300	21.4600	17.2400	24.5000	24.0000	17.0800
252	39.2500	20.1000	16.3000	24.5000	24.2000	17.2500
253	38.7600	19.6200	15.9900	24.2500	24.2900	16.7600
254	39.1900	19.0000	15.1600	24.1500	24.7700	16.2200
255	38.7900	19.3700	15.6900	24.5000	24.6600	16.3700
256	37.4000	19.2300	15.5500	24.8500	26.0000	15.8900
257						
258	<b>Individual Equities</b>					
259	0.899193985	0.764712396	0.877565605	0.830728975	0.587173063	0.901167607
260						
261	<b>dual Equities</b>					
262	0.003208531	0.002320576	0.003056037	0.002738534	0.001368144	0.003222631
263						
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267	0.07189	-0.02310	-0.01375	-0.02982	-0.00755	0.02863
268	0.00863	-0.02046	-0.00077	-0.02949	-0.01912	-0.01719
269	0.02964	0.04811	0.03331	0.05104	-0.01426	0.03461
270	-0.00838	-0.00608	-0.03177	0.02342	-0.08440	0.02430
271	-0.00704	0.01212	0.02280	-0.03414	0.04852	-0.00256
272	-0.00567	0.03260	0.00450	-0.06302	-0.03722	0.00102
273	0.03077	-0.01616	-0.00826	-0.02323	0.03587	0.03617
274	0.01978	-0.01042	0.02164	0.00261	0.02937	0.00835
275	-0.03925	-0.00300	-0.00074	0.01934	0.05752	-0.02376
276	0.00351	-0.01513	0.02480	0.02023	-0.00623	0.02425
277	-0.02336	-0.01073	0.01146	-0.05532	0.01366	-0.00539
278	-0.04169	0.04076	0.00568	0.02611	0.00982	0.00000
279	-0.02649	0.05749	0.03000	0.03420	0.00639	-0.00148
280	-0.03990	0.04906	0.01839	0.00783	0.00695	0.01321
281	0.00239	-0.05185	-0.01701	-0.02289	-0.01579	-0.02809

## Prices

	U	V	W	X	Z	AB	AC
241	31.5700	37.3800	13.5200	35.8800	40.1500	21.0000	32.11
242	31.1000	39.0600	13.3500	36.5400	40.5000	20.0000	32.71
243	32.9000	41.7500	14.5200	39.1600	41.1000	19.0000	33.87
244	33.9700	44.1100	15.2100	38.9500	41.9500	18.0000	34.11
245	33.9600	42.0000	14.2500	38.9900	41.7000	15.0000	33.67
246	33.9800	42.4100	14.0000	40.0000	41.7600	14.0000	33.56
247	35.1000	43.2300	14.7000	41.9900	43.1000	13.0000	34.37
248	35.8600	44.0600	14.6400	43.3400	43.9100	12.0000	34.57
249	34.9000	43.8300	14.2700	41.4500	43.1800	11.0000	34.18
250	34.6400	44.0500	14.0700	41.9400	42.5000	8.0000	33.92
251	34.1000	43.1800	14.1300	40.7500	42.2800	7.0000	33.43
252	32.2000	38.9900	13.8400	38.7300	40.5000	6.0000	32.29
253	32.5000	40.2500	13.2400	39.0500	40.6700	5.0000	32.33
254	32.4300	38.6600	13.6600	39.2900	40.2800	4.0000	32.04
255	32.5500	39.0400	13.7600	40.3700	41.1000	1.0000	32.33
256	32.1500	37.4400	14.0200	39.4500	40.6000		31.83
257							
258					QQQ		
259	0.940263061	1.120716706	0.739249299	0.899825561	0.586842949		
260							
261					QQQ		
262	0.003508312	0.004984151	0.002168609	0.00321304	0.001366606		
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267	0.02255	0.03991	-0.01062	0.02244	0.00000		0.01189
268	0.01580	0.07135	-0.00714	0.00663	0.01003		0.01066
269	0.05687	0.01076	0.00714	0.03395	0.01911		0.02797
270	0.05474	-0.03553	-0.01614	-0.00356	-0.00524		-0.01391
271	-0.03907	0.01620	0.01614	-0.01003	0.00262		-0.00056
272	-0.01173	0.02382	-0.02340	0.01003	0.00000		0.00018
273	0.05639	0.02217	0.00726	0.03571	0.01623		0.02333
274	0.02750	0.01469	0.01079	0.00137	0.01534		0.00895
275	-0.01549	0.01075	0.03169	0.00616	-0.00540		0.00116
276	-0.01108	0.01538	0.03072	-0.02488	0.00477		0.00119
277	0.00186	-0.00105	-0.01524	-0.01463	0.00506		0.00484
278	-0.04551	-0.04582	-0.00685	-0.00588	-0.00126		-0.00146
279	0.00611	0.06202	0.00343	0.01559	0.02743		0.01578
280	-0.01389	0.00980	0.01192	0.03320	0.00979		0.00501
281	-0.00294	0.00103	-0.09025	-0.03109	-0.03092		-0.02162

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Prices

	AD	AE	AF	AG	AH	AI
241	709,681,500	59,970,000.00	51,250,000.00	47,245,000.00	13,860,000.00	42,700,000.00
242	722,971,000	62,955,000.00	51,600,000.00	48,158,000.00	13,545,000.00	43,750,000.00
243	748,548,000	64,500,000.00	51,040,000.00	49,698,000.00	14,355,000.00	44,910,000.00
244	753,753,000	64,590,000.00	51,000,000.00	50,886,000.00	14,922,000.00	45,140,000.00
245	744,168,500	60,810,000.00	50,850,000.00	51,249,000.00	15,237,000.00	45,150,000.00
246	741,745,000	56,235,000.00	50,950,000.00	50,446,000.00	15,426,000.00	45,450,000.00
247	759,521,000	57,915,000.00	49,990,000.00	53,130,000.00	16,821,000.00	46,080,000.00
248	763,905,000	57,825,000.00	48,340,000.00	55,000,000.00	17,253,000.00	47,000,000.00
249	755,419,500	56,910,000.00	46,940,000.00	54,560,000.00	16,938,000.00	46,880,000.00
250	749,563,500	55,140,000.00	47,950,000.00	53,603,000.00	17,046,000.00	46,000,000.00
251	738,887,000	51,630,000.00	48,240,000.00	51,480,000.00	16,452,000.00	46,000,000.00
252	713,690,500	51,090,000.00	48,110,000.00	49,214,000.00	14,931,000.00	45,080,000.00
253	714,506,000	52,155,000.00	48,700,000.00	49,335,000.00	14,787,000.00	44,860,000.00
254	708,098,000	51,075,000.00	48,490,000.00	48,928,000.00	14,544,000.00	44,300,000.00
255	714,601,000	53,775,000.00	48,250,000.00	49,324,000.00	15,120,000.00	42,990,000.00
256	703,387,000	51,750,000.00	48,600,000.00	48,015,000.00	14,922,000.00	39,650,000.00
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## Prices

	AJ	AK	AL	AM	AN	AO
241	19,062,000.00	45,855,000.00	26,262,000.00	52,354,500.00	15,623,000.00	39,915,000.00
242	17,910,000.00	47,592,000.00	26,073,000.00	53,200,000.00	15,895,000.00	42,015,000.00
243	18,495,000.00	48,690,000.00	29,430,000.00	56,335,000.00	16,473,000.00	41,805,000.00
244	19,377,000.00	48,240,000.00	28,512,000.00	56,905,000.00	16,201,000.00	41,190,000.00
245	19,710,000.00	48,510,000.00	28,782,000.00	56,430,000.00	16,056,500.00	41,190,000.00
246	19,845,000.00	51,021,000.00	29,619,000.00	55,670,000.00	16,337,000.00	40,395,000.00
247	21,294,000.00	51,633,000.00	33,930,000.00	56,050,000.00	17,255,000.00	40,770,000.00
248	21,645,000.00	51,408,000.00	34,272,000.00	57,142,500.00	17,212,500.00	42,645,000.00
249	20,655,000.00	51,741,000.00	32,931,000.00	54,872,000.00	17,042,500.00	42,105,000.00
250	20,322,000.00	52,740,000.00	34,209,000.00	54,957,500.00	16,609,000.00	41,760,000.00
251	20,295,000.00	52,101,000.00	34,146,000.00	54,587,000.00	16,371,000.00	41,565,000.00
252	17,811,000.00	50,679,000.00	30,330,000.00	55,071,500.00	15,283,000.00	39,960,000.00
253	18,198,000.00	51,264,000.00	30,321,000.00	54,292,500.00	15,546,500.00	39,960,000.00
254	16,650,000.00	51,840,000.00	29,511,000.00	54,045,500.00	15,580,500.00	40,365,000.00
255	16,254,000.00	52,713,000.00	31,437,000.00	54,254,500.00	15,478,500.00	40,530,000.00
256	16,740,000.00	51,966,000.00	28,944,000.00	53,551,500.00	15,002,500.00	39,855,000.00
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## Prices

	AP	AQ	AR	AS	AT	AU
241	49,376,000.00	37,840,000.00	19,200,000.00	18,210,000.00	25,260,000.00	54,100,000.00
242	49,296,000.00	38,380,000.00	19,610,000.00	19,260,000.00	25,740,000.00	54,800,000.00
243	51,864,000.00	40,760,000.00	20,500,000.00	19,410,000.00	25,000,000.00	56,020,000.00
244	50,880,000.00	41,250,000.00	21,200,000.00	19,060,000.00	26,900,000.00	55,800,000.00
245	48,832,000.00	41,360,000.00	21,630,000.00	18,670,000.00	26,360,000.00	54,400,000.00
246	50,056,000.00	42,000,000.00	21,810,000.00	18,080,000.00	25,920,000.00	52,000,000.00
247	49,296,000.00	43,700,000.00	21,860,000.00	18,320,000.00	26,250,000.00	50,420,000.00
248	48,640,000.00	44,900,000.00	22,620,000.00	18,310,000.00	26,050,000.00	46,200,000.00
249	51,440,000.00	43,450,000.00	22,210,000.00	18,000,000.00	25,430,000.00	48,800,000.00
250	50,800,000.00	42,010,000.00	21,750,000.00	17,460,000.00	24,530,000.00	48,580,000.00
251	51,440,000.00	40,930,000.00	21,460,000.00	17,240,000.00	24,500,000.00	48,000,000.00
252	49,912,000.00	39,250,000.00	20,100,000.00	16,300,000.00	24,500,000.00	48,400,000.00
253	50,272,000.00	38,760,000.00	19,620,000.00	15,990,000.00	24,250,000.00	48,580,000.00
254	48,872,000.00	39,190,000.00	19,000,000.00	15,160,000.00	24,150,000.00	49,540,000.00
255	48,584,000.00	38,790,000.00	19,370,000.00	15,690,000.00	24,500,000.00	49,320,000.00
256	49,096,000.00	37,400,000.00	19,230,000.00	15,550,000.00	24,850,000.00	52,000,000.00
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	AV	AW	AX	AY	AZ	BB
241	14,900,000.00	15,785,000.00	18,690,000.00	13,520,000.00	28,704,000.00	
242	15,530,000.00	15,550,000.00	19,530,000.00	13,350,000.00	29,232,000.00	
243	16,090,000.00	16,450,000.00	20,875,000.00	14,520,000.00	31,328,000.00	
244	16,290,000.00	16,985,000.00	22,055,000.00	15,210,000.00	31,160,000.00	
245	15,520,000.00	16,980,000.00	21,000,000.00	14,250,000.00	31,192,000.00	
246	16,290,000.00	16,990,000.00	21,205,000.00	14,000,000.00	32,000,000.00	
247	17,350,000.00	17,550,000.00	21,615,000.00	14,700,000.00	33,592,000.00	
248	18,170,000.00	17,930,000.00	22,030,000.00	14,640,000.00	34,672,000.00	
249	17,720,000.00	17,450,000.00	21,915,000.00	14,270,000.00	33,160,000.00	
250	17,130,000.00	17,320,000.00	22,025,000.00	14,070,000.00	33,552,000.00	
251	17,080,000.00	17,050,000.00	21,590,000.00	14,130,000.00	32,600,000.00	
252	17,250,000.00	16,100,000.00	19,495,000.00	13,840,000.00	30,984,000.00	
253	16,760,000.00	16,250,000.00	20,125,000.00	13,240,000.00	31,240,000.00	
254	16,220,000.00	16,215,000.00	19,330,000.00	13,660,000.00	31,432,000.00	
255	16,370,000.00	16,275,000.00	19,520,000.00	13,760,000.00	32,296,000.00	
256	15,890,000.00	16,075,000.00	18,720,000.00	14,020,000.00	31,560,000.00	
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	A	B	C	D	E	F	G
282			-0.04411	0.00509	-0.05868	-0.05839	-0.02426
283			0.07141	0.00412	0.00938	0.10534	0.00000
284			-0.02262	0.01200	-0.06257	-0.06825	-0.00897
285			-0.05075	0.00697	-0.00415	-0.01662	0.01342
286			-0.03549	-0.00497	-0.04767	-0.03444	-0.00445
287			0.02513	0.01877	0.03175	0.01859	0.00000
288			-0.00448	0.00098	0.01259	0.02267	0.00000
289			0.05622	-0.00779	-0.02448	-0.05015	-0.01348
290			0.06830	-0.01096	-0.01204	0.00712	0.00676
291			0.07379	0.00596	0.06286	0.09241	0.00672
292			0.03139	-0.02811	0.01372	0.00869	-0.01916
293			-0.00477	0.01215	-0.05942	-0.03125	-0.02651
294			-0.04853	0.01200	-0.04879	0.04904	0.03219
295			-0.01304	0.02261	-0.03729	0.00252	0.02131
296			0.02467	0.04373	-0.03011	-0.00630	-0.01680
297			-0.01961	-0.01311	-0.02417	0.02466	-0.03670
298			0.07855	0.00938	0.00000	0.05431	0.00168
299			-0.03326	-0.00093	-0.07411	-0.03295	0.00112
300			0.04871	-0.03133	-0.04527	-0.07650	0.02939
301			0.00268	-0.01555	-0.09355	-0.07219	0.00181
302			-0.03384	-0.01381	0.04844	0.07252	0.05791
303			-0.06201	0.01479	-0.01980	-0.07366	0.04745
304			-0.00591	-0.00490	0.01980	0.03175	-0.03930
305			0.01388	0.00098	0.02843	0.00778	-0.03493
306			-0.04091	0.01849	-0.12778	-0.03708	0.00245
307			0.04757	-0.01164	0.04970	-0.06326	-0.04905
308			-0.14144	0.01453	-0.07029	-0.02252	-0.06638
309			0.10383	-0.02828	0.10718	0.10277	0.03847
310			-0.02309	-0.04657	-0.09298	-0.00517	-0.00739
311			-0.06463	-0.00624	-0.09122	-0.01779	-0.18785
312			-0.02958	0.00934	-0.05633	-0.05683	0.07317
313			0.06378	0.01334	0.18282	0.14823	-0.03184
314			0.01801	0.02118	0.00000	0.05832	0.02456
315			0.00356	-0.01914	0.05654	0.01384	0.02899
316			-0.03899	0.03400	-0.07780	-0.05339	0.00167
317			-0.00139	0.01173	-0.01400	-0.29263	-0.02104
318			0.07060	-0.01271	0.08477	-0.06634	-0.00683
319			0.03226	-0.00691	-0.09767	0.02055	0.02746
320			-0.07186	0.04553	0.03069	-0.09841	-0.00522
321			0.08843	-0.01047	0.06815	0.17661	0.05599

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Prices

	H	I	J	K	L	M	N
282	-0.07875	-0.07519	-0.05002	0.00488	-0.02687	-0.03727	-0.02817
283	0.05006	0.01909	0.02897	-0.00292	0.03065	0.01726	0.01512
284	-0.05402	0.01089	-0.03417	0.00874	-0.03651	-0.03320	-0.01251
285	-0.01800	-0.00989	-0.00785	-0.00777	-0.04299	-0.01458	-0.01604
286	-0.01320	-0.00798	-0.02125	-0.02867	-0.03853	-0.02310	-0.04038
287	0.07008	0.04218	0.01038	0.04798	0.04057	-0.03223	0.00501
288	0.01889	-0.04721	0.03138	-0.00961	-0.00102	0.01029	0.09075
289	-0.04203	-0.07990	-0.00523	-0.01753	0.02419	-0.02418	-0.01472
290	-0.00784	-0.05926	-0.03266	-0.04624	-0.04377	-0.03740	-0.02060
291	0.05918	0.04747	0.02639	-0.08030	0.03175	0.05302	-0.00569
292	0.02381	0.05581	0.05708	0.06579	0.01798	0.06012	0.15320
293	-0.00272	-0.01366	0.01868	-0.02644	-0.03220	-0.01634	-0.07279
294	0.07767	0.01471	0.08599	-0.00107	-0.01338	-0.05416	0.00939
295	0.03790	-0.00209	-0.03935	0.01597	-0.05320	-0.04627	0.00715
296	-0.00975	-0.00105	-0.03147	-0.00848	-0.03560	-0.02024	-0.02359
297	0.02817	-0.00840	-0.00663	-0.03799	0.03778	-0.03595	-0.10723
298	0.00079	0.07516	0.02800	-0.00889	0.03641	0.03036	0.08488
299	-0.01197	-0.04605	-0.02375	0.00889	-0.07306	-0.08176	-0.00635
300	0.00640	-0.03016	-0.05058	-0.08060	0.00451	-0.05204	-0.02674
301	-0.09531	-0.00106	-0.05196	0.00717	0.01342	-0.02378	-0.07569
302	0.04208	-0.02678	0.01716	0.03739	0.04029	-0.01322	0.04147
303	0.01998	-0.03536	0.03986	-0.17228	-0.01722	-0.11253	-0.01167
304	-0.01244	0.02664	-0.05381	0.11566	-0.02418	0.00495	-0.07200
305	0.02961	-0.05864	0.05547	-0.02706	-0.04551	0.01227	0.02492
306	-0.04475	-0.04392	0.00387	-0.00751	-0.04891	-0.05515	-0.05048
307	0.01430	-0.02457	0.00769	-0.03061	0.00122	-0.05292	-0.08907
308	-0.01092	0.00248	0.00219	-0.02492	-0.02723	0.00812	-0.03602
309	0.04298	0.03535	0.04535	0.04416	0.11820	0.16373	0.08884
310	0.05356	-0.02916	0.03637	-0.06972	-0.02827	-0.07420	0.06496
311	0.01673	-0.00123	-0.01648	0.00679	0.00115	-0.03959	-0.12251
312	-0.02675	0.04467	-0.02459	0.07430	-0.04331	0.07411	0.01178
313	0.00695	0.00589	0.02459	0.01867	0.10870	0.09314	0.06899
314	0.05172	0.01976	0.03220	0.07367	-0.01623	-0.01310	0.01518
315	0.00728	0.08384	0.05468	0.02800	-0.02540	-0.03352	0.02551
316	-0.03168	-0.03335	-0.02516	-0.01010	-0.01806	-0.02532	-0.09689
317	-0.00827	-0.01877	-0.07588	-0.06401	-0.08061	-0.03559	0.00000
318	-0.10578	0.06579	-0.10952	0.05495	0.05640	0.06996	-0.02933
319	-0.02549	-0.03397	0.04747	0.01692	-0.05517	0.00673	-0.02166
320	-0.15616	0.00000	-0.08558	0.00112	-0.05318	0.03084	-0.04224
321	0.14404	0.03918	0.08944	0.07115	0.11416	0.02358	0.04467

## Prices

	O	P	Q	R	S	T
282	-0.11460	-0.02841	-0.02011	-0.02431	0.00853	-0.06131
283	0.04879	0.01997	0.02148	-0.05184	-0.04087	0.05228
284	-0.06318	-0.05219	-0.05205	0.02783	-0.01400	-0.02606
285	-0.06164	0.01183	-0.03677	-0.00758	0.01653	-0.04662
286	-0.02438	0.01315	-0.04992	0.03199	-0.03726	-0.00817
287	0.04818	0.01011	0.03025	-0.01566	-0.00262	0.03334
288	-0.05313	0.01568	0.03749	0.01006	0.01692	-0.00583
289	-0.06137	-0.00995	-0.08121	-0.05486	-0.02301	-0.03850
290	-0.01274	-0.02020	-0.02383	-0.04645	-0.05339	0.01916
291	0.11588	0.04837	0.03651	-0.06089	0.04627	0.02093
292	0.01135	-0.02960	0.00785	-0.20493	-0.00667	0.01685
293	-0.18666	-0.09131	-0.01259	-0.15415	-0.07072	-0.02753
294	-0.04404	0.07545	0.02251	-0.01770	0.10104	0.01386
295	-0.12075	-0.02950	-0.02489	0.11977	0.01162	-0.00053
296	0.05968	-0.00601	0.00869	-0.00198	0.00384	-0.00425
297	0.03951	-0.01824	0.00549	0.01770	-0.02985	0.00372
298	-0.04203	0.00459	0.01995	0.07327	0.01179	0.04710
299	-0.07333	-0.00153	-0.03413	0.01795	0.00260	-0.05722
300	-0.08208	-0.02477	0.00000	0.01764	-0.03033	-0.02768
301	0.01609	0.01555	-0.12495	-0.04652	-0.00134	-0.04676
302	0.08616	0.01531	-0.01998	0.06041	0.05984	0.02801
303	-0.13677	-0.04032	0.00275	-0.02091	0.03230	-0.01540
304	-0.00306	-0.04697	-0.01012	-0.07113	0.00609	-0.02071
305	-0.02638	-0.01841	-0.01302	0.02796	-0.01963	-0.00641
306	-0.07508	-0.05557	-0.03235	0.01097	-0.02510	-0.03453
307	0.02345	-0.06264	-0.03744	-0.02578	-0.04151	-0.01280
308	-0.05969	-0.11044	0.01198	-0.01883	-0.04193	-0.03942
309	0.02259	0.11802	0.12306	0.05726	0.02993	0.12520
310	-0.07675	-0.00568	-0.03028	-0.09208	0.02776	0.03159
311	-0.14983	-0.07076	-0.02564	-0.02997	-0.01180	-0.02822
312	-0.01520	-0.02266	-0.00372	0.03390	-0.07675	-0.00958
313	0.19428	0.23967	0.08047	0.12170	0.02393	0.06472
314	0.00539	0.02749	-0.03142	0.03245	0.01381	0.00846
315	0.04039	-0.00319	-0.03427	0.00000	-0.00412	0.00053
316	-0.08062	0.02372	0.05010	-0.00505	0.04971	-0.00793
317	-0.10412	-0.04310	-0.04097	0.02007	0.02204	-0.08119
318	0.04652	0.00650	-0.00913	-0.11201	0.00256	-0.06293
319	-0.04445	0.02085	0.00366	0.06280	0.02276	0.01158
320	0.07750	0.00791	-0.07791	-0.02287	0.00000	0.00784
321	0.06119	0.07433	0.04256	0.08196	-0.02789	0.06401

## Prices

	U	V	W	X	Z	AB	AC
282	-0.07215	-0.02808	-0.06899	-0.08338	-0.03581		-0.04346
283	0.04236	0.03829	-0.03021	0.06640	0.02189		0.02623
284	-0.08213	-0.04889	-0.02066	-0.02676	-0.03105		-0.03021
285	0.00328	-0.04525	0.00209	-0.00147	-0.02461		-0.01585
286	-0.06549	0.00445	0.00000	-0.04890	-0.01561		-0.02348
287	-0.04048	0.07125	0.01242	0.03931	0.02299		0.02272
288	0.00121	0.01895	-0.01034	-0.00894	-0.00536		0.00706
289	0.00726	-0.00470	-0.02101	-0.03346	-0.01831		-0.02123
290	-0.08024	-0.01012	-0.02581	-0.05158	-0.01587		-0.01779
291	0.06812	0.06865	-0.00875	0.09620	0.03619		0.04171
292	-0.04052	0.05199	-0.04037	0.02772	0.01531		0.01851
293	-0.29888	-0.00595	-0.02549	-0.02329	-0.07543		-0.03961
294	0.06625	0.05461	-0.00471	-0.00369	0.05744		0.01883
295	0.00000	-0.05829	-0.01425	-0.08480	-0.02692		-0.01538
296	-0.00805	0.02548	-0.02421	0.03401	-0.01146		-0.00043
297	-0.03954	0.01516	0.02182	-0.00859	0.00140		-0.00896
298	0.02817	0.04668	0.10680	0.09638	0.02209		0.03563
299	-0.08880	-0.04139	0.04632	-0.02451	-0.03120		-0.02811
300	-0.04567	-0.01508	-0.03135	0.01737	-0.02279		-0.02171
301	-0.02652	-0.06985	0.01475	-0.02764	-0.03968		-0.03276
302	0.04320	0.04909	-0.05814	0.05593	0.02663		0.02749
303	-0.03365	0.00953	-0.08319	-0.02901	0.00292		-0.02444
304	0.00946	-0.05480	-0.02934	-0.06067	-0.03405		-0.01366
305	-0.01518	0.01186	0.02934	-0.03493	-0.00453		0.00014
306	-0.04298	-0.00425	0.02381	-0.23686	-0.05361		-0.03999
307	0.04298	0.04538	-0.03107	0.01490	-0.01609		-0.00943
308	-0.00961	-0.12664	-0.10752	0.04813	-0.02546		-0.04042
309	0.14529	0.14636	0.05008	0.11695	0.07838		0.07702
310	-0.08353	0.06498	-0.05549	-0.04533	0.00919		-0.01030
311	-0.32027	-0.00678	-0.05301	-0.10216	-0.04681		-0.04431
312	-0.02789	0.02441	0.09296	0.03241	-0.00320		-0.00554
313	0.12320	0.04749	0.11109	0.11088	0.08668		0.07050
314	0.02469	0.03936	-0.04053	-0.00252	0.01459		0.02107
315	0.07885	-0.05824	0.04053	0.01835	-0.00145		0.01141
316	-0.04185	-0.08492	0.00698	-0.08087	-0.04448		-0.02585
317	-0.05264	-0.09091	-0.06469	-0.12182	-0.05613		-0.05365
318	0.11075	-0.00237	-0.14921	0.06561	0.02456		-0.00502
319	-0.09955	0.06655	0.01427	-0.01528	-0.00196		0.00550
320	0.03501	-0.06324	0.11998	0.02940	-0.03775		-0.02521
321	0.07257	0.06512	-0.04628	0.07990	0.06234		0.06438

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## Prices

	A	B	C	D	E	F	G
322			0.01549	-0.00865	-0.03593	-0.03749	0.02927
323			0.04508	0.01152	0.01453	-0.08132	0.03774
324			-0.00155	-0.02024	-0.05053	0.05900	-0.01061
325			0.03126	0.01450	-0.00253	0.05899	0.04448
326			-0.01208	-0.00385	-0.05069	-0.10336	0.03085
327			-0.02462	-0.00096	-0.07616	-0.11631	-0.02300
328			0.03595	0.00289	-0.00144	0.03012	-0.06646
329			-0.07163	0.02187	-0.05784	-0.02707	-0.04226
330			-0.07194	-0.02091	-0.01694	0.01813	-0.02873
331			0.12460	0.02841	0.02908	0.09218	0.01677
332			-0.00537	0.00744	0.03118	0.03334	-0.00926
333			0.00384	-0.00558	-0.02667	-0.15283	-0.01201
334			0.01522	0.01112	-0.01208	-0.09009	0.01443
335			-0.08509	0.01555	0.00000	-0.02041	-0.05112
336			0.05129	-0.00729	0.02847	-0.00690	-0.09086
337			-0.10103	0.00000	-0.00148	-0.02570	-0.04568
338			0.04809	0.00456	0.09987	0.08504	0.04335
339			-0.09770	-0.01282	-0.05645	-0.11751	0.02464
340			-0.06037	-0.00277	-0.07193	-0.03863	-0.08073
341			-0.00726	-0.01772	0.04465	0.03619	0.06675
342			-0.01468	-0.00661	-0.05999	-0.05155	-0.06552
343			0.06028	-0.01623	-0.04748	0.08529	0.02192
344			0.01108	0.00384	-0.00162	-0.04483	-0.01114
345			0.11931	0.00192	0.13637	0.21042	0.07122
346			-0.13225	0.01331	-0.08418	-0.00705	0.01195
347			-0.06435	-0.01714	-0.01396	0.02890	-0.02405
348			0.08187	-0.03221	0.09956	0.09281	0.07411
349			0.08075	-0.02817	0.14216	0.06499	0.03334
350			-0.04748	0.00914	-0.11289	-0.07669	0.00329
351			-0.06578	0.00705	-0.06381	-0.03222	-0.00412
352			-0.14397	0.01692	-0.05570	-0.01224	0.03149
353			0.08565	-0.05582	-0.02191	0.02247	-0.02102
354			0.01786	-0.00104	0.00631	-0.03008	-0.14764
355			0.00686	-0.00419	-0.01905	-0.06200	-0.03567
356			-0.11146	-0.01055	-0.03092	-0.09247	-0.09005
357			0.04379	0.00106	-0.06663	-0.04091	0.01095
358			0.09369	0.00844	0.08789	0.19824	0.01633
359			0.00380	0.02797	-0.01631	-0.00190	0.00573
360			-0.00666	0.02621	0.04030	0.11577	-0.07411
361			-0.06098	0.00892	-0.00316	0.05070	-0.01408

## Prices

	H	I	J	K	L	M	N
322	0.09309	-0.00521	0.00712	0.00726	-0.03302	0.03129	0.04769
323	0.02120	0.04091	0.05934	-0.00726	0.06723	0.04418	0.06142
324	0.00620	0.00400	0.04329	-0.01151	0.01778	0.02330	-0.04678
325	-0.04825	-0.06069	0.00663	-0.00634	-0.02905	-0.03317	-0.00801
326	0.07417	0.00529	0.00415	-0.02358	0.02905	0.03317	0.04165
327	-0.11131	-0.03762	-0.10471	-0.02526	-0.08501	-0.07160	-0.09355
328	0.00084	0.02808	-0.03574	-0.05370	0.02135	-0.06605	-0.05858
329	-0.06959	-0.02153	-0.03866	-0.00353	-0.06173	-0.21001	-0.05542
330	-0.09639	-0.09945	-0.03409	-0.00118	0.00622	0.04775	-0.07171
331	0.11866	0.06626	0.05057	0.01637	0.05315	0.06761	0.10638
332	0.05486	0.02773	0.01790	-0.02348	0.00820	-0.02451	-0.04011
333	-0.06727	-0.03564	0.02035	-0.02404	-0.04780	-0.00998	-0.06627
334	-0.10923	0.02574	-0.02827	-0.01966	0.03251	0.00000	0.01303
335	-0.02519	-0.03029	-0.15571	-0.04180	-0.02885	-0.06471	-0.23036
336	-0.00409	0.00228	0.00562	-0.05450	0.04646	0.01064	-0.08899
337	-0.17782	-0.02882	-0.04313	0.03885	-0.05997	-0.02681	0.04074
338	0.08783	0.05932	0.04280	0.01046	0.04117	0.05806	0.11651
339	0.07451	0.03440	-0.00231	-0.00260	-0.02766	0.00256	0.03328
340	-0.12746	-0.02207	-0.16034	0.00909	-0.00489	-0.08539	-0.05812
341	-0.03611	-0.00382	-0.04608	-0.01170	0.01339	-0.02825	0.02990
342	0.13827	-0.04356	0.08826	0.05469	-0.07662	-0.12497	-0.07878
343	0.08291	-0.02895	-0.00037	0.01230	0.01297	-0.04312	0.01267
344	-0.07972	0.00469	-0.03678	-0.01354	-0.05701	0.02013	-0.07273
345	0.23056	0.06234	0.15968	0.04483	0.12909	0.07363	0.20085
346	0.00190	-0.00772	0.00615	0.00355	-0.01328	-0.11778	-0.08414
347	-0.04307	0.01974	0.05103	-0.02027	-0.02960	-0.03175	-0.03681
348	0.09323	0.02148	0.08919	0.02851	0.04766	0.06252	0.09855
349	-0.01698	0.01477	0.02417	-0.02490	0.04549	0.07771	0.11886
350	-0.08864	-0.05599	-0.03331	0.01312	-0.00801	0.07860	-0.06071
351	-0.05684	-0.01338	-0.03773	0.01762	-0.06163	-0.06008	-0.04210
352	-0.03847	-0.02156	-0.02965	-0.01999	-0.00367	-0.02477	-0.05903
353	0.11298	-0.05662	-0.01703	0.01063	-0.05582	-0.00314	0.02667
354	0.02678	0.03459	-0.07420	-0.00945	-0.11503	-0.01905	0.00819
355	-0.05520	0.02546	-0.11728	-0.02766	-0.02805	-0.06625	-0.17032
356	-0.20529	-0.02312	-0.11533	-0.04108	-0.13439	-0.09326	-0.14548
357	0.06840	0.18427	-0.07306	-0.00382	0.06304	0.03327	0.01774
358	0.17749	-0.06740	0.21747	0.00127	0.06534	0.06681	0.20764
359	-0.03791	0.01138	-0.00294	-0.01282	-0.01824	-0.04879	-0.00897
360	0.07025	0.02840	0.04679	0.01282	0.00000	0.02817	0.01609
361	0.01826	-0.01715	0.07173	-0.00255	-0.02957	-0.00348	0.07017

## Prices

	O	P	Q	R	S	T
322	0.02487	0.02169	-0.05050	-0.02995	-0.06231	-0.04614
323	-0.00881	0.00000	-0.05950	-0.01189	0.01359	0.02966
324	0.01231	0.00571	0.02505	-0.24912	0.02004	0.03602
325	-0.04652	-0.03769	-0.08159	-0.05638	-0.03226	-0.02123
326	0.05175	-0.01039	-0.05047	0.03869	-0.00548	0.00675
327	-0.03721	-0.01959	-0.06815	-0.03637	0.00821	-0.10517
328	-0.06141	0.00909	0.09141	-0.03534	-0.03748	-0.02716
329	-0.07781	-0.08004	-0.06653	-0.07984	-0.10583	-0.09039
330	0.07203	-0.01814	-0.02740	0.05802	0.04459	-0.04442
331	0.03042	0.08298	0.13668	0.01460	0.01493	0.09697
332	0.04754	0.01218	0.01747	0.02387	0.00000	-0.00066
333	-0.05506	-0.03229	-0.05335	0.02331	0.00148	-0.07385
334	0.01869	0.03229	0.05118	-0.08158	-0.00892	0.02337
335	0.05055	-0.04803	-0.15198	-0.01765	-0.04269	-0.09001
336	-0.02857	0.03432	-0.03599	-0.02839	0.02310	0.04199
337	0.04082	-0.02642	-0.06768	0.00000	-0.05153	-0.06209
338	0.12874	0.05812	0.07810	0.05599	0.02062	0.05915
339	-0.09623	0.03791	-0.04233	0.01961	0.02174	0.03829
340	-0.10275	-0.03939	-0.02048	-0.03709	0.01070	-0.08194
341	0.02396	0.00889	0.00961	-0.04904	-0.04666	-0.01863
342	-0.08552	0.00881	0.14710	-0.04049	-0.03897	-0.04734
343	-0.01802	0.01883	-0.00236	0.02449	-0.00831	0.01144
344	0.00805	0.02270	0.06410	-0.07246	0.03607	0.02487
345	0.06027	0.14226	0.11111	0.08581	0.02544	0.15120
346	-0.03455	0.00000	-0.04256	0.12688	0.00626	-0.03606
347	-0.04392	-0.01594	-0.06412	-0.05771	-0.02049	-0.03303
348	0.12456	-0.00496	0.05998	0.03646	0.01108	-0.09487
349	0.07796	0.00372	0.06050	0.02591	0.05365	-0.13560
350	-0.03390	-0.01120	-0.03789	0.03204	0.01482	-0.00368
351	-0.05311	-0.03697	-0.08038	0.03323	0.01024	-0.06478
352	0.01623	0.00518	-0.03132	-0.00875	-0.03405	-0.00197
353	0.02648	-0.03685	0.03791	-0.04725	-0.06374	-0.04025
354	0.00348	-0.02442	0.11364	-0.03996	0.02692	-0.06358
355	-0.03534	0.00000	-0.04392	-0.03167	-0.06121	-0.05858
356	-0.15325	-0.10110	-0.07191	-0.05338	-0.15028	0.01839
357	0.03704	-0.02930	0.03449	-0.10160	0.14695	-0.01839
358	0.12159	0.08975	0.07743	0.05346	0.01653	0.16830
359	0.02996	-0.00143	-0.02985	-0.07095	-0.00164	-0.05026
360	0.03581	0.00856	-0.00811	-0.02381	0.03072	0.00206
361	-0.03755	-0.00713	0.01215	-0.05893	0.02671	-0.04848

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Prices

	U	V	W	X	Z	AB	AC
322	-0.00803	0.01485	-0.22644	-0.07152	-0.00864		-0.00796
323	0.05301	0.07120	-0.07538	0.03372	0.01227		0.02277
324	-0.01736	0.00163	0.02461	0.02391	0.01287		0.00193
325	0.01161	0.00365	0.00347	0.01992	-0.00755		-0.00668
326	-0.04323	0.03459	-0.01043	-0.08873	-0.00380		-0.00158
327	-0.05574	-0.10150	-0.05388	-0.13420	-0.08142		-0.06199
328	0.01684	-0.03701	-0.04916	0.07633	-0.00021		-0.00949
329	-0.03182	-0.10148	-0.03953	-0.05197	-0.05343		-0.06123
330	0.15538	-0.10962	0.05492	0.05890	-0.02380		-0.01990
331	0.03624	0.09561	0.04113	0.05749	0.07929		0.06546
332	0.01764	0.04434	-0.04113	0.04015	0.01999		0.01248
333	-0.06687	-0.06934	-0.02317	-0.05705	-0.05992		-0.03272
334	0.00187	-0.09417	-0.01575	-0.04256	-0.00064		-0.01386
335	0.08748	-0.02645	-0.04463	-0.03520	-0.04162		-0.05290
336	-0.09873	-0.09724	0.00000	-0.10456	-0.00157		-0.00834
337	0.00000	-0.04130	-0.03807	-0.05010	-0.04584		-0.04139
338	0.15037	0.07726	0.08666	0.08252	0.05565		0.05925
339	-0.10970	0.04956	0.01957	-0.20030	-0.01250		-0.01944
340	-0.11507	-0.06800	-0.04560	-0.01285	-0.06089		-0.05490
341	0.03003	-0.11810	0.04947	-0.06540	-0.03919		-0.01175
342	-0.05264	0.10316	-0.08037	-0.09764	0.00074		-0.01085
343	0.04671	0.11028	0.06872	0.02532	0.01600		0.02037
344	-0.00398	-0.07813	-0.07712	0.04132	-0.00489		-0.01162
345	0.13751	0.19291	-0.00847	0.04400	0.10428		0.11203
346	0.00000	-0.08650	0.02935	-0.08532	-0.03876		-0.02917
347	-0.02996	0.01604	-0.01666	0.06941	-0.02231		-0.01450
348	0.09222	0.07492	0.02079	0.11811	0.02231		0.05416
349	0.05553	0.04979	0.07528	0.05420	0.08961		0.03737
350	-0.07696	-0.11815	0.07356	-0.08846	-0.03724		-0.03470
351	-0.06899	-0.08890	0.03142	-0.07370	-0.04163		-0.03632
352	-0.00179	-0.11214	-0.02083	-0.03077	-0.05011		-0.03272
353	-0.01260	0.01193	-0.02128	-0.03483	-0.02321		-0.00343
354	-0.00545	-0.00993	-0.05527	0.07135	0.00196		-0.01220
355	0.01267	-0.04282	-0.01143	-0.02176	-0.07923		-0.03903
356	-0.07273	-0.11311	-0.07146	-0.02524	-0.05906		-0.09111
357	-0.00388	0.06692	-0.06811	0.01936	0.00587		0.02473
358	0.11194	0.13644	-0.02227	0.13242	0.07618		0.09007
359	-0.00348	-0.03355	0.00897	-0.04222	0.00618		-0.00982
360	0.06083	-0.02391	0.00446	0.03834	0.01123		0.02379
361	0.00491	0.02587	-0.00893	0.00775	-0.00203		0.00426

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## Prices

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THE WARRANTS REPRESENTED BY THIS GLOBAL WARRANT (THE "WARRANTS") HAVE NOT BEEN REGISTERED AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND TRADING IN THE WARRANTS HAS NOT BEEN APPROVED BY THE UNITED STATES COMMODITY FUTURES TRADING COMMISSION (THE "CFTC") UNDER THE UNITED STATES COMMODITY EXCHANGE ACT (THE "COMMODITY EXCHANGE ACT"). THE WARRANTS, OR INTERESTS THEREIN, MAY NOT AT ANY TIME BE OFFERED, SOLD, RESOLD, TRADED OR DELIVERED, DIRECTLY OR INDIRECTLY, IN THE UNITED STATES OF AMERICA (INCLUDING THE STATES AND THE DISTRICT OF COLUMBIA), ITS TERRITORIES, ITS POSSESSIONS AND OTHER AREAS SUBJECT TO ITS JURISDICTION ("UNITED STATES") OR DIRECTLY OR INDIRECTLY OFFERED, SOLD, RESOLD, TRADED OR DELIVERED TO, OR FOR THE ACCOUNT OR BENEFIT OF ANY PERSON ("U.S. PERSON") WHO IS (I) AN INDIVIDUAL WHO IS A CITIZEN OR RESIDENT OF THE UNITED STATES; OR (II) A CORPORATION, PARTNERSHIP OR OTHER ENTITY ORGANISED IN OR UNDER THE LAWS OF THE UNITED STATES OR ANY POLITICAL SUBDIVISION THEREOF OR WHICH HAS ITS PRINCIPAL PLACE OF BUSINESS IN THE UNITED STATES; OR (III) ANY ESTATE OR TRUST WHICH IS SUBJECT TO UNITED STATES FEDERAL INCOME TAXATION REGARDLESS OF THE SOURCE OF ITS INCOME; OR (IV) ANY TRUST IF A COURT WITHIN THE UNITED STATES IS ABLE TO EXERCISE PRIMARY SUPERVISION OVER THE ADMINISTRATION OF THE TRUST AND IF ONE OR MORE UNITED STATES TRUSTEES HAVE THE AUTHORITY TO CONTROL ALL SUBSTANTIAL DECISIONS OF THE TRUST; OR (V) A PENSION PLAN FOR THE EMPLOYEES, OFFICERS OR PRINCIPALS OF A CORPORATION, PARTNERSHIP OR OTHER ENTITY DESCRIBED IN (II) ABOVE; OR (VI) ANY ENTITY ORGANISED PRINCIPALLY FOR PASSIVE INVESTMENT, TEN PER CENT OR MORE OF THE BENEFICIAL INTERESTS IN WHICH ARE HELD BY PERSONS DESCRIBED IN (I) THROUGH (V) ABOVE IF SUCH ENTITY WAS FORMED PRINCIPALLY FOR THE PURPOSE OF INVESTMENT BY SUCH PERSONS IN A COMMODITY POOL THE OPERATOR OF WHICH IS EXEMPT FROM CERTAIN REQUIREMENTS FROM PART 4 OF THE CFTC'S REGULATIONS BY VIRTUE OF ITS PARTICIPANTS BEING NON-U.S. PERSONS; OR (VII) ANY OTHER "U.S. PERSON" AS SUCH TERM MAY BE DEFINED IN REGULATIONS UNDER THE SECURITIES ACT OR IN REGULATIONS ADOPTED UNDER THE COMMODITY EXCHANGE ACT. IN ADDITION IN THE ABSENCE OF RELIEF FROM THE CFTC, OFFERS, SALES, RE-SALES, TRADES OR DELIVERIES OF WARRANTS, OR INTERESTS THEREIN, DIRECTLY OR INDIRECTLY IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF U.S. PERSONS MAY CONSTITUTE A VIOLATION OF UNITED STATES LAW GOVERNING COMMODITIES TRADING, CONSEQUENTLY, ANY OFFER, SALE, RE-SALE, TRADE OR DELIVERY MADE, DIRECTLY OR INDIRECTLY, WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF A U.S. PERSON WILL NOT BE RECOGNISED.

**TORENS LIMITED**

The ("Issuer")

**GLOBAL CALL WARRANT**

In relation to

A Basket of Basket Shares of Companies in the US Technology Sector due 28 April 2005

This global warrant (the "Global Warrant") represents a duly authorised issue of 1000 warrants (the "Warrants" and each one a "Warrant") in relation to a Basket of Shares of Companies in the US Technology Sector due 28 April 2005. The Global Warrant is subject to the attached terms and conditions (the "Conditions").

The Global Warrant shall be governed by and construed in accordance with English law.

In witness whereof this Global Warrant has been executed by Torens Limited as a deed poll and delivered on the day and year first below written.

Dated 28 April 2000

SIGNED as a deed  
by Torens Limited



In the presence of: N. Oates

Witness' signature N. Oates

Name: Mrs. N. Oates

Address: 22 NEADON CRESCENT  
ASHBOURNE PARK BRADWIN  
IM21NJ 104

## TERMS AND CONDITIONS OF WARRANTS

### 1. Definitions

In these conditions:

**"Announcement Date"** means (i) in respect of a Nationalisation, the date of the first public announcement of a firm intention to nationalise (whether or not amended or on the terms originally announced) that leads to the Nationalisation and (ii) in respect of an Insolvency, the date of the first public announcement of the institution of a proceeding or presentation of a petition or passing of a resolution (or other analogous procedure in any jurisdiction) that leads to the Insolvency, in each case as determined by the Issuer.

**"Basket"** means, with respect to a Warrant, a basket of shares comprising the Basket Shares specified in Schedule A hereto.

**"Basket Share"** means any share that is for the time being comprised in the Basket.

**"Basket Share Exchange"** means, with respect to a Basket Share, NASDAQ, or such other stock exchange as the Issuer shall determine to be the principal stock exchange on which a Basket Share is listed or traded.

**"Delivery Disruption"** means, in the opinion of the Issuer, the failure of the Issuer to deliver on the Shares Settlement Date the requisite number of Basket Shares that is due solely to illiquidity in the market for such Basket Shares.

**"EAIB"** means European American Investment Bank, a financial institution organised under the laws of Austria.

**"Exercise Business Day"** means, in respect of any Warrant, a day (other than Saturday or Sunday) during the Exercise period on which banks in London are open for business.

**"Exchange Notice"** means a notice substantially in the form of the Exercise Notice as set out in Schedule A to these Conditions.

**"Exercise Period"** means the period commencing from 10.00am (London time) on the Issue Date to 10.00am (London time) on the Expiration Date.

**"Exercise Price"** means USD \$180,785 per Warrant, less an amount (if any equal to the net amount of any dividends payable on the Share Entitlement which are reflected by a change from cum dividend quotation to ex dividend quotation of the Basket Shares on the relevant Basket Exchange(s) on any day falling after the Trade Date and on or before the Exercise Date.

**"Expiration Date"** means 28 April 2005.

**"USD"** means lawful currency of the United States of America.

**"Insolvency"** means that by reason of the voluntary or involuntary liquidation, bankruptcy or insolvency of or any analogous proceeding affecting the issuer of the Basket Shares are required to be transferred to a trustee, liquidator or other similar official, or (if holders of the Basket Shares become legally prohibited from transferring them.

**"Merger Date"** means, in respect of a Merger Event, the date upon which all holders of the necessary number of Basket Shares to constitute a Merger Event (other than, in the case of a take-over offer, Basket Shares owned or controlled by the offeror) have agreed to or have irrevocably become obliged to transfer their Basket Shares.

**"Merger Event"** means, in respect of the Basket Shares, any (i) reclassification or change of such Basket Shares that results in a transfer of or an irrevocable commitment to transfer all such Basket Shares outstanding; (ii) consolidation, amalgamation or merger of the issuer of the Basket Shares with or into another entity (other than a consolidation, amalgamation or merger in which the issuer of the Basket Shares is the continuing entity and which does not result in any such reclassification or change of all such Basket Shares outstanding); or (iii) other take-over offer for such Basket Shares that result in a transfer of or an irrevocable commitment to transfer all such Basket Shares (other than such Basket Shares owned or controlled by the offeror), in each case if the Merger Date is on or before the Expiration Date.

**"Merger Event Settlement Amount"** means an amount as determined by the Issuer which shall seek to preserve for the Holder(s) (as defined under Clause 2) the economic equivalent of any payment or delivery (assuming satisfaction of each applicable condition precedent) to which the Holder(s) would have been entitled under the Warrant(s) after the date but for the occurrence of the Merger Event.

**"Nationalisation"** means, with respect to any of the Basket Shares, all the Basket Shares or all the assets or substantially all the assets of the issuer of the Basket Shares are nationalised, expropriated or are otherwise required to be transferred to any governmental agency, authority or entity.

**"Nationalisation/Insolvency Settlement Amount"** means an amount determined by the Issuer which shall seek to preserve for the Holders(s) the economic equivalent of any payment or delivery (assuming satisfaction of each applicable condition precedent) to which the Holder(s) would have been entitled under the Warrant (s) after that date but for the occurrence of the Nationalisation or Insolvency (as the case may be).

**"New Shares"** means shares (whether of the offeror or a third party).

**"Other Consideration"** means cash and/or any securities (other than New Shares) or assets (whether of the offeror or a third party).

**"Potential Adjustment Event"** means, with respect to any of the Basket Shares:

- (a) a subdivision, consolidation or reclassification of the Basket Shares (unless a Merger Event), or a free distribution or dividend of any such Basket Shares to existing holders by way of a bonus, capitalisation or similar issue;
- (b) a distribution or dividend to existing holders of the Basket Shares of (i) such Basket Shares, or (ii) other share capital or securities granting the right to payment of dividends and/or the proceeds of liquidation of the issuer of the Basket Shares equally or proportionately with such payments to holders of such Basket Shares, or (iii) any other type of securities, rights or warrants or other assets, in any case for payment (cash or other) at less than the prevailing market price as determined by the Issuer;
- (c) an extraordinary dividend;

- (d) a call by the issuer of the Basket Shares whether out of profits or capital and whether the consideration for such repurchase is cash, securities or otherwise; or
- (e) any other similar event that may have a diluting or concentrative effect on the theoretical value of the Basket Shares.

**"Settlement Business Day"** means a day (other than Saturday or Sunday) on which each (i) banks in New York and the relevant Settlement System are open for business.

**"Settlement Disruption"** means, in the opinion of the Issuer, any circumstance beyond the control of the Issuer as a result of which the relevant Settlement System cannot clear the transfer of the appropriate number of Basket Shares.

**"Settlement System"** means, with respect to Basket Shares, the system through which such shares are customarily settled or any successor to such respective settlements systems. If the relevant settlement system ceases to settle the Basket Shares, the Issuer will, in its sole discretion, determine another manner of settlement of such Basket Shares.

**"Share Entitlement"** means one Basket of Shares per Warrant.

**"Share Settlement Date"** means, subject to Condition 6, the fifth Settlement Business Day after the Exercise Date.

**"Issue Date"** means 28 April 2000.

## 2. Form and Transfer

The Warrants will at all times be represented by a Global Warrant which will not itself be transferable and which will be deposited with the EAIB. Definitive warrants will not be issued.

Notwithstanding any notice to the contrary, the person for the time being appearing in the books of EAIB as the holder of a Warrant shall, for all purposes, be treated by the Issuer and all other persons as the person who is from time to time entitled to exercise the Warrants, being the person who is recorded in the books of EAIB as the holder thereof (the "Holder" and, collectively, the "Holders").

All transactions involving the Warrants (including transfers), in the open market or otherwise, must be affected through an account at, and in accordance with any applicable rules and procedures of EAIB. Title to each Warrant will pass upon registration of the transfer in the books of the relevant Clearing System. The minimum trading lot for the Warrants is one Warrant and multiples of one Warrant thereafter.

## 3. Status

The Warrants (i) constitute unsecured and unsubordinated obligations of the Issuer, (ii) rank equally among themselves and (iii) at the date the Warrants were issued rank equally with all other present and future unsecured and unsubordinated obligations of the Issuer, other than obligations preferred by law. The Underlying Assets do not constitute obligations of the Issuer and the issue of Warrants shall not result in any rights or obligations arising on the Holder or the Issuer in respect of such Underlying Assets. Neither the Issuer nor the Holder is obliged (but it may) to purchase, hold or deliver (other than in accordance with these Conditions) any Underlying Assets.

The Warrants are not secured by any of the Basket Shares or any other securities.

#### **4. Exercise Rights**

##### **(a) Exercise Rights**

Each Warrant will, when duly exercised in accordance with the terms and conditions set out below, entitle the Holder to purchase from the Issuer the Basket of Basket Shares in consideration of the payment of the Exercise Price.

##### **(b) Issuer's Obligations**

In no event shall the Issuer have any liability for indirect, incidental or consequential damages (whether or not it has been advised of the possibility of such damages).

The exercise and settlement of the Warrants is subject to all applicable fiscal and other laws, regulations and practices in force on and following the Exercise Date and/or the Share Settlement Date.

The Issuer shall not incur any liability whatsoever if, after using its reasonable efforts, it is unable to effect the transactions contemplated as a result of any such laws, regulations or practices.

##### **(c) Prescription**

If an Exercise Notice for a Warrant has not been duly completed and delivered in accordance with the provisions of Condition 5 set out below, by 10:00am (London time) on the Expiration Date, then that Warrant shall become void.

#### **5. Exercise Procedure**

##### **(a) Exercise Notice**

Subject to the exercise by the Issuer of the Issuer Call Right in accordance with Condition 12, or the to prior cancellation by the Issuer in accordance with the provisions of Condition 13, the Warrants may be exercised on any Exercise Business Day by the Holder delivering a duly completed Exercise Notice to EAIB on or before 10.00am (London time) on such day (the "Exercise Date"). Any Exercise Notice delivered after 10.00am on any such day shall be deemed to have been delivered on the immediately succeeding Exercise Business Day.

The Exercise Notice shall be in substantially the form set out in Schedule B hereto.

##### **(b) Verification**

Upon receiving an Exercise Notice, EAIB, shall verify that the person exercising the Warrants specified in the Exercise Notice is the Holder of those Warrants according to its books. Subject to such verification, EAIB will confirm to the Issuer the number of Warrants being exercised.

If the number of Warrants being exercised specified in the Exercise Notice exceeds the number of Warrants in the warrant account specified in the relevant Exercise Notice, the Exercise Notice will be deemed to be null and void and EAIB, will notify the Issuer accordingly. If the number of Warrants being exercised specified in the Exercise specified in the Exercise Notice does not exceed the number of Warrants in EAIB's account specified in

the relevant Exercise Notice, then EAIB, will, on or before the Share Settlement Date, debit the account of the relevant Holder with the Warrants being exercised.

The Issuer will notify Holders as soon as reasonably practicable after it becomes aware of any Exercise Notice being invalid.

(c) Settlement

(+) If a Warrant has been duly exercised in accordance with these conditions then on the Share Settlement Date the relevant Holder shall pay to the Issuer the Exercise Price and the Issuer shall transfer to the relevant Holder the Share Entitlement.

Such payment and such delivery will be made through the appropriate Settlement System at the account or by reference to an identification code notified to the Holders by the Warrant Agent, in the case of the Issuer, and, in the case of the Holders, as set out in the Exercise Notice, on a delivery against payments basis (wherever possible through relevant Settlement System).

(d) Effect of Exercise

Unless the exercise is determined to be improper, (i) the delivery of an Exercise Notice in relation to a Warrant shall constitute an irrevocable election and undertaking by the Holder to exercise that Warrant and (ii) after delivery of the Exercise Notice the relevant Holder may not transfer either legal or beneficial ownership of, or otherwise deal with, the Warrants being exercised. Notwithstanding this, if following the delivery of an Exercise Notice, any Holder does transfer or attempt to transfer the Warrants referred to in the Exercise Notice (the "Exercised Warrants"), then the Holder will be liable to the Issuer for any losses, reasonable costs and expenses suffered or incurred by the Issuer including those suffered as result of the Issuer terminating any related hedging arrangements as a result of receiving the relevant Exercise Notice and subsequently (i) entering into replacement hedging arrangements in respect of the Exercised Warrants or (ii) paying any amount in relation to the Exercised Warrants either with or without having entered into replacement hedging arrangements.

(e) Expenses

A Holder exercising a Warrant shall pay (i) all expenses including, without limitation, all stamp, issue, registration, securities transfer or other similar taxes or duties ("expenses"), if any, payable in connection with the issue and/or exercise of the Warrants, (ii) all expenses involved in delivering the Exercise Notice.

(f) Determinations

Any determination as to whether a Warrant has been properly exercised shall be made by the Issuer and shall be conclusive and binding on the Holder of that Warrant. Any attempt to exercise a Warrant that is determined to be improper shall be null and void and a further attempt will be determined in relation to when the subsequent Exercise Notice is delivered. The Issuer and EAIB will endeavour to notify the Holder of an improperly exercised Warrant of the improper exercise as soon as possible upon becoming aware of such improper exercise. In the absence of negligence or wilful misconduct, the Issuer or EAIB, will not be liable to any person for any action taken or omitted to be taken by it in connection with the notification or determination of an improper exercise. The Issuer will not under any circumstances be liable for any acts or defaults of EAIB in relation to the performance of their duties in relation to the Warrants.



**(g) Global Warrant**

When a Warrant is exercised, the Issuer will advise EAIB, and EAIB will note the exercise on the Global Warrant and the number of Warrants represented by such Global Warrant shall be reduced by the cancellation of the Warrants exercised.

**6. Settlement Disruption**

If in the opinion of the Issuer there is a Settlement Disruption in relation to the Basket Shares which prevents delivery of such Basket Shares on the original Share Settlement Date, the Share Settlement Date will be the first succeeding day on which there is no Settlement Disruption provided always that, if Settlement Disruption prevents settlement on each of the 10 Settlement Business Days immediately following the original Share Settlement Date, (i) if such Basket Shares can be delivered in any other commercially reasonable manner, then the Share Settlement Date will be the first day on which settlement of a sale of Basket Shares executed on that 10<sup>th</sup> Settlement Business Day customarily would take place using such other commercially reasonable manner of delivery, and (ii) if such Shares cannot be delivered in any other commercially reasonable manner, then the Share Settlement Date will be postponed until delivery can be effected through the relevant Settlement System or in any other commercially reasonable manner.

**7. Delivery Disruption**

If in the opinion of the Issuer there is a Delivery Disruption in relation to the Basket Shares and the Issuer has notified the relevant Holder(s) within one Settlement System Business Day following the Exercise Date to that effect, then the Issuer may:

- (a) determine the obligation of the Holder(s) and/or the Issuer to deliver such Basket Shares and the Issuer will pay an amount as it determines shall seek to preserve for the Holder(s) the economic equivalent of the relevant receipt or delivery, as the case may be, (assuming satisfaction of each applicable condition precedent) to which the Holder(s) would have been entitled under the Warrant(s) after that date but for the occurrence of such Delivery Disruption, in which event the entitlements of the respective exercising Holder(s) to deliver or receive (as the case may be) such Basket Shares pursuant to such exercise shall cease and the Issuer's obligations under the Warrant(s) shall be satisfied in full upon payment of such amount; or
- (b) determine that the Issuer shall deliver on the Share Settlement Date such number of Basket Shares as it can deliver on that date and that the Issuer shall pay an amount which it determines shall seek to preserve for the Holder(s) the economic equivalent of the delivery or receipt (as the case may be) of the remainder of the Basket Shares (assuming satisfaction of each applicable condition precedent) to which the Holder(s) would have been entitled under the Warrant(s) after that date but for the occurrence of such Delivery Disruption, in which event the entitlements of the respective exercising Holder(s) to deliver or receive (as the case may be) such Basket Shares pursuant to such exercise shall cease and the Issuer's obligations under the Warrant(s) shall be satisfied in full upon payment of such amount.

**8. Adjustment**

The Issuer shall determine whether or not at any time a Potential Adjustment Event has occurred in relation to the Basket Shares and where it determines that such an event has occurred, the Issuer will determine whether such Potential Adjustment Event has a diluting or concentrative effect on the theoretical value of the Basket Shares and, if so, will make such adjustment as it considers appropriate, if any, to the Conditions (including adjusting the Share

Exercise Price and/or the Share Entitlement, which the Issuer determines to be appropriate to account for that diluting or concentrative effect and determine the effective date(s) of such adjustment(s).

#### **9. Merger Event**

If, in the opinion of the Issuer, a Merger Event has occurred in relation to the Basket Shares, then the Issuer may:

- (a) make such adjustment as it considers appropriate, if any, to the Conditions (including adjusting the Share Exercise Price and/or the Share Entitlement), to account for such Merger Event and determine the effective date(s) of such adjustment(s); or
- (b) determine that the Warrants shall be terminated, in which case the Warrants shall cease to be exercisable as of the Merger Date, (or in the case of any Warrants which have been exercised but remain unsettled, the entitlements of the respective exercising Holder(s) to sell the Basket Shares pursuant to such exercise shall cease) and the Issuer's obligations under the Warrants shall be satisfied in full upon payment of the Merger Event Settlement Amount.

#### **10. Nationalisation or Insolvency**

If, in the opinion of the Issuer, a Nationalisation or an Insolvency has occurred in relation to any of the Basket Shares, then the Issuer may:

- (a) make such adjustment as it considers appropriate, if any, to the Conditions (including adjusting the Basket of Basket Shares, Exercise Price and/or the Share Entitlement), which the Issuer determines to be appropriate to account for such Nationalisation and/or Insolvency (as the case may be) and determine the effective date(s) of such adjustment(s); or
- (b) determine that the Warrants shall be terminated, in which case the Warrants shall cease to be exercisable as of the Announcement Date, (or in the case of the Warrants which have been exercised but remain unsettled, the entitlements of the respective exercising Holder(s) to sell Basket Shares pursuant to such exercise shall cease) and the Issuer's obligations under the Warrants shall be satisfied in full upon payment of the Nationalisation/Insolvency Settlement Amount.

#### **11. Illegality and Force Majeure**

The Issuer shall have the right to terminate its obligations under the Warrants if it determines that it is or will become unlawful or impractical for it to carry out all or any of its obligations under the Warrants for any reason including, without limitation, as a result of compliance with any applicable present or future law, rule, regulation, judgement, order or directive or with any requirement or request of any governmental, administrative, legislative or judicial authority or power. In such circumstances, the Issuer shall, if and to the extent permitted by applicable law, pay to each Holder in respect of each Warrant held by him an amount determined by the Issuer as representing the fair market value of such Warrant immediately prior to such termination (ignoring such illegality or impracticality), less the cost to the Issuer of, or the loss realised by the Issuer on, unwinding any underlying related hedge arrangements, all as determined by the Issuer.

**12. Issuer Call Right**

The Issuer shall have the right (but not the obligation) to call for all (but not some only) of the Warrants outstanding at any time during the period commencing on the Issue Date and ending on the date falling 270 days thereafter upon giving no less than 10 (ten) days prior written notice to the Holders in accordance with Condition 20(b) stating the date (the "Call Date") upon which the call of Warrants is to be made. Warrants may be exercised at any time up to the Exercise Business Day immediately prior to the Call Date and any Warrants not so exercised shall, subject to payment of the Call Price (as defined below), be cancelled and be of no further effect on the Call Date. On the Call Date, the Issuer shall credit to the account of each Holder (as such account(s) are notified to it by the Holders for such purpose) an amount equal to the Call Price per Warrant owned by the relevant Holder.

For the purpose of the foregoing, the "Call Price" shall be an amount equal to the greater of (a) the subscription price for each Warrant (the "Subscription Price") plus interest thereon for the period commencing on the Issue Date and ending on the Call Date (both dates inclusive) at a rate equal to the rate of interest at which the Issuer deposited money, or would have been able to deposit money, during entirety of that period and (b) the Subscription Price plus 50 per cent of the positive intrinsic value of each Warrant (if any) as at the Call Date.

**13. Purchase and Cancellation**

The Issuer or any of its affiliates may at any time purchase one or more of the Warrants at any price in the open market, by tender, by private treaty or otherwise. If a Warrant is purchased by the Issuer or its affiliate it may be cancelled, held or re-sold or otherwise dealt with. No Warrant that has been exercised or purchased and cancelled may be re-issued.

**14. Taxation**

The Issuer is not liable for or otherwise obliged to pay, and the relevant Holder shall pay, any tax, duty, charges, withholding or other payment which may arise as a result of, or in connection with the issue, ownership, transfer, exercise or enforcement of any Warrant, including, without limitation, the delivery of any amount of Basket Shares. The Issuer shall have the right, but not the duty, to withhold or deduct from any amount payable to the Holder, such amount as is necessary (i) for the payment of any such taxes, duties, charges, withholdings or other payments or (ii) for effecting reimbursement in accordance with the following sentence. The relevant Holder shall promptly reimburse the Issuer, if the Issuer is obliged to pay any tax, duty, charge, withholding or other payment referred to in this condition.

**15. Invalidity and Modification**

Should any of the provisions contained in these Conditions be or become invalid, the validity of the remaining provisions shall not be affected in any way. The Issuer will endeavour in good faith to replace the invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid or unenforceable provisions.

The Issuer may modify the Conditions without the consent of the Holders for the purposes of curing any ambiguity or correcting or supplementing any provision contained herein in any manner which the Issuer may deem necessary or desirable provided that such modification is not materially prejudicial to the interests of the Holders. Notice of any such modification will be given to the Holders in accordance with Condition 20, but failure to give, or non-receipt of, such notice will not affect the validity of such modification.

**16. Further Issues**

The Issuer may, from time to time without the consent of the Holders, create and issue further Warrants which form a single series with the Warrants.

**17. Substitution**

The Issuer may at any time, and from time to time, without the consent of the Holders, substitute for itself as obligor under the Warrants, any subsidiary or holding company of the Issuer or any subsidiary of such holding company which at the time of such substitution has the same credit rating as the Issuer (the "New Issuer"), provided that the New Issuer shall assume all obligations that the Issuer owes to the Holders under or in relation to the Warrants. If such substitution occurs, then any reference in these conditions to the Issuer shall be construed as a reference to the New Issuer. Any substitution will be promptly notified to the Holder in accordance with these conditions. In connection with any exercise by the Issuer of the right of the Substitution, the Issuer shall not be obliged to have regard to any of the consequences suffered by individual Holders as a result of the exercise by the Issuer of the right of substitution, including consequences resulting from the Holders being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of any particular territory. No Holder shall be entitled to claim from the Issuer any indemnification or repayment in respect of any consequence suffered by the Holder as a result of the exercise by the Issuer of the right of substitution.

**18. Governing Law**

The Warrants are governed by and construed in accordance with the laws of England. The Issuer hereby irrevocably agrees for the exclusive benefit of each Holder that the courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with the Warrants and that accordingly any suit, action or proceeding (together in this paragraph referred to as "Proceedings") arising out of or in connection with the Warrants may be brought in such courts. Nothing in this paragraph shall limit the right of the bearer of any Warrant to take Proceedings in any other court of competent jurisdiction, whether concurrently or not.

**19. Warrant Agent**

The Initial "Warrant Agent" is European American Investment Bank and its specified office is its head office at Suite 10 Lillengasse 1, 3<sup>rd</sup> Floor, A-1010, Vienna.

The Issuer reserves the right at any time to vary or terminate the appointment of EAIB and to appoint other or additional Warrant Agents. Notice of any such termination or appointment and of any changes in the specified office of EAIB will be given to the Holders in accordance with these Conditions.

EAIB is acting solely as agent of the Issuer and does not assume any obligation or duty to, or any relationship of agency or trust for or with, any Holder.

**20. Notices****(a) To the Issuer**

Notice may be given to the Issuer by delivering the notice in writing to the Issuer at 19 Mount Havelock, Douglas, Isle of Man or such other address as may be notified to the Holders in accordance with these Conditions.

**(b) To the Holders**

Any notice to the Holders will be deemed to have been duly given to the Holders if the notice is given to EAIB for onward transmission to the Holders. Any such notice shall be deemed to have been given by the Issuer to the Holders on the date the notice is given to EAIB.

**21. Determinations of the Issuer**

All calculations, determinations or other decisions by the Issuer pursuant to these Conditions (including where a matter is to be decided by reference to the Issuer's opinion) shall (save in the case of manifest error) be made in the Issuer's sole and absolute discretion and shall be final and binding on the Holder. The Issuer shall not have any responsibility for any errors or omissions in the calculation and determination of the any payment due under Conditions 6 to 12 arising from such errors or omissions.

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**SCHEDULE A**

**Share Basket**

<b>Share</b>	<b>Ticker</b>	<b>Number of Shares in the Basket</b>
Qualcom	QCOM	150,000
Verisign	VRSN	125,000
CMGI	CMGI	150,000
Internet Capital	ICGE	200,000
Broadvision	BVSN	200,000
RealNetworks	RNWK	200,000
Ariba	ARBA	150,000
Yahoo	YHOO	150,000
Citrix	CTXS	200,000
Amazon	AMZN	150,000

**SCHEDULE B**

**THIS EXERCISE NOTICE SHALL NOT BE EFFECTIVE UNLESS THE APPROPRIATE CERTIFICATION AS TO NON-BENEFICIAL OWNERSHIP HAS ALSO BEEN DELIVERED WHERE REQUIRED**

**Torens Limited  
Warrants**

**In relation to**

**a Basket of Shares of Companies in the US Technology Sector due 28 April 2005**

**Exercise Notice for Warrants**

1. **Name of the Holder of the Warrants**  
(if joint Holders, insert all names)
2. **Address of the Holder**  
(if joint Holders, insert the address of the first named Holder)
3. **Number of Warrants being exercised**
4. **Warrant Account Details**  
  
The Holder irrevocably instructs EAIB to debit its account, on or before the Share Settlement Date, with the Number of Warrants specified in section 3 of this notice.
5. **Undertaking**  
  
The Holder undertakes to pay all expenses, including, without limitation, any applicable stamp duty and or any other duties or taxes due in connection with the exercise by the Holder of the Warrants and the Holder irrevocably instructs EAIB (i) to debit the account specified in section 4 of this notice with an amount equal to the sum of any such expenses, duties or taxes and (ii) to pay such expenses, duties or taxes.
6. **Signature of the Holder**  
  
(If joint Holder's, all Holder's must sign)
7. **Date of this Notice**

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**Dated 28 April, 2000**

**Torens Limited**

**US Call Warrants due 2005**

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**SUBSCRIPTION AGREEMENT**

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THIS SUBSCRIPTION AGREEMENT (the "Agreement") is made on 28 April 2000, between:

- (1) Torrens Limited (the "Issuer"); and
- (2) EA Investment Services Limited, a company organised under the laws of the British Virgin Isles (the "Company").

**WHEREAS:**

The parties wish to record the arrangements between them for the issue by the Issuer of [insert number] USD covered call warrants due 2005 (the "Warrants", which expression where the context so admits shall include the Global Warrant (as defined below) to be delivered in respect of them).

**IT IS AGREED** as follows:

**1. ISSUE AND SUBSCRIPTION**

- (a) Subject to the terms and conditions of this Agreement, the Issuer agrees to issue the Warrants on 28 April 2000 or on such later date as the Issuer and the Company may agree (the "Closing Date"). The Warrants will be subscribed for at a subscription price of US\$58,611 per Warrant (the "Subscription Price").
- (b) The Company hereby agrees to subscribe and pay for, or to procure subscriptions and payment for, the Warrants on the Closing Date at the Subscription Price subject to the terms of this Agreement.

**2. CLOSING**

- (a) On the Closing Date, the Issuer will issue and deliver to the Company or to its order a duly executed global warrant representing the Warrants (the "Global Warrant").
- (b) Against such delivery the Company will pay or cause to be paid to the Issuer in immediately available funds the subscription monies for the Warrant (being the Subscription Price of the Warrant).
- (c) The Issuer hereby authorises and instructs such payment(s) to be credited to an account of the Issuer at the Company (the "Issuer Account"), which monies shall remain so credited until the expiry or exercise by holders of the Warrants (on a pro rata basis in the case of only some of the Warrants being exercised) or until the exercise of the Put Right in accordance with clause 6 below.

**3. UNDERTAKINGS BY THE ISSUER**

The Issuer undertakes with the Company as follows:

- (a) the Issuer will pay any stamp, issue, registration, documentary, transaction or other taxes and duties, including interest and penalties, payable on or in connection with the creation, issue and offering of the Warrants or the execution or delivery of this Agreement; and

- (b) the Issuer will forthwith notify the Company if at any time prior to payment of the subscription monies to the Issuer on the Closing Date anything occurs which renders or may render untrue or incorrect in any respect any of the representations and warranties contained in clause 5 and will forthwith take such steps as the Company may reasonably require to remedy and/or publicise the fact.

#### 4. REPRESENTATIONS AND WARRANTIES

As a condition of the obligation of the Company to subscribe and pay for or procure subscriptions and payment for the Warrant, the Issuer represents and warrants to the Company that:

- (a) the Warrants are at the date of issue fully covered as a result of the Issuer holding, or having the unconditional right to call for, the Basket Shares (as defined in the Global Warrant);
- (b) it is duly incorporated and validly existing under the laws of the Isle of Man with full power and authority to own its assets and to conduct a business;
- (c) all necessary actions, authorisations, conditions and things (including, without limitation, any necessary filings, registrations and consents) required to be taken, given, fulfilled and done by or on behalf of the Issuer in the Isle of Man have been, or will be, taken, given, fulfilled and done in connection with the issue of the Warrants on or before the Closing Date;
- (d) no consent, approval, authorisation, licence or qualification of or with any court or governmental agency or body is required and no other action or thing is required to be taken, fulfilled or done in relation to this paragraph 4(d) which has not been taken, fulfilled or done on or prior to the date hereof by the Issuer for the execution and delivery of the Agreement and the issue and distribution of the Warrants and the performance of the terms of the Warrants;
- (e) the matters referred to in paragraph 4(d) above do not and will not:
  - (i) infringe, conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, the documents constituting the Issuer, or any indenture, trust deed, mortgage or other agreement or instrument to which the Issuer or any of its subsidiaries is a party or by which it or any of its properties is bound; or
  - (ii) conflict with any existing applicable law, rule, regulation, judgment, order or decree of any government, governmental body, administrative agency or court, domestic or foreign, having jurisdiction over the Issuer, any such subsidiary or any of its properties.
- (f) this Agreement has been duly authorised, executed and delivered by the Issuer and constitutes valid and legally binding obligations of the Issuer enforceable in accordance with their respective terms subject to the laws of bankruptcy and other laws affecting the rights of creditors generally;

- (g) the Warrants have been duly authorised by the Issuer and, when duly executed, authenticated and issued will constitute valid and legally binding obligations of the Issuer enforceable in accordance with their respective terms subject to the laws of bankruptcy and other laws affecting the rights of creditors generally;
- (h) there are no pending actions, suits or proceedings against or affecting the Issuer or any of its subsidiaries or any of its properties which, if determined adversely to the Issuer or any such subsidiary, would individually or in the aggregate have a material adverse effect on the condition (financial or other), prospects, results of operations or general affairs of the Issuer or on the ability of the Issuer to perform its obligations under this Agreement or the Warrants or which are otherwise material in the context of the issue of the Warrant and, to the best of the Issuer's knowledge, no such actions, suits or proceedings are threatened or contemplated;
- (i) no stamp or other duty is assessable or payable in, and no withholding or deduction for any taxes, duties, assessments or governmental charges of whatever nature is imposed or made for or on account of any income, registration, transfer or turnover taxes, customs or other duties or taxes of any kind, levied, collected, withheld or assessed by or within, the Isle of Man in connection with the authorisation, execution or delivery of this Agreement or with the authorisation, execution, issue, sale or delivery of the Warrants;
- (j) no event has occurred or circumstance arisen which, had the Warrant been issued, might (or with the giving of notice and/or the lapse of time and/or the fulfilment of any other requirement might) constitute an "Event of Default" as defined in the terms and conditions of the Warrants;
- (k) that neither the Issuer, its affiliates nor any persons acting on its behalf has made or will make offers or sales of securities under circumstances that would require the registration of the Warrants under the United States Securities Act of 1933.

##### 5. CONDITIONS PRECEDENT

This Agreement and the obligations of the Company are conditional upon:

- (a) there having been, as at the Closing Date, no adverse change which is material in the context of the issue of the Warrants, in the financial or other condition of the Issuer, nor any breach of, nor any event rendering untrue, misleading or incorrect in any material respect, any of the warranties of the Issuer contained herein, nor any breach by the Issuer of any of its obligations hereunder;
- (b) the Issuer holding, or having the unconditional right to call for the Basket of Shares (as defined in the Global Warrant) on the Closing Date.

##### 6. PUT RIGHT

- (a) If at any time prior to the expiry of the Warrants, the Issuer no longer holds, or no longer has the right to call for the Basket of Basket Shares, then the Company shall have the right (the "Put Right") to put back to the Issuer all or any Warrants then outstanding which at such time it continues to hold for its own account.

- (b) In the event that the Company exercises the Put Right in accordance with clause 7(1), then it shall deliver to the Issuer the Warrants in respect of which such right is exercised and shall, if appropriate, amend the Global Warrant accordingly.
- (c) In exchange for the delivery of such Warrants to the Issuer, the Issuer shall be liable to pay to the Company an amount per Warrant equal to the Subscription Price plus interest thereon for the period commencing on the Closing Date and ending on the date of delivery by the Bank at a rate equal to the rate of interest payable on the Issuer Account, which payment shall be satisfied and discharged by the Company debiting the Issuer Account by the appropriate amount.

## 7. INDEMNITY

The Issuer agrees to indemnify and hold harmless the Company and its respective directors, officers, employees (each an "Indemnified Person") from and against any and all losses, claims, damages, liabilities, judgements and expenses (including, but not limited to, legal costs and expenses) which it may incur, or which may be made against it caused by or arising out of any breach or alleged breach of any of the representations, warranties, undertakings or agreements contained in, or any certificate issued by the Issuer pursuant to, this Agreement. The amount paid or payable by an Indemnified Person as a result of such losses, claims, damages, liabilities, judgments or expenses shall include any legal or other expense incurred by such Indemnified Person in connection with investigating or defending such claim.

## 8. TERMINATION

The Company may by notice given at any time prior to payment of the subscription monies for the Warrants to the Issuer terminate this Agreement if:

- (a) any of the representations and warranties contained in clause 4 shall have been untrue in any material respect at the time of making thereof or shall subsequently have become untrue in any material respect or in the event of failure to perform any of the Issuer's undertakings or agreements in this Agreement; or
  - (b) on the Closing Date any of the conditions specified in clause 6 has not been satisfied or waived by the Company; or
  - (c) in the opinion of the Company, there shall have been since the date hereof, any change, or any development involving a prospective change, in national or international monetary, financial, political or economic conditions or currency exchange rates or foreign exchange controls such as would in the view of the Company be likely to prejudice materially the success of the offering and distribution of the Warrant or dealings in the Warrant in the secondary market.
- (2) Upon such notice being given, the parties hereto shall be released and discharged from their obligations hereunder.

## 9. GOVERNING LAW AND JURISDICTION

- (1) This Agreement is governed by, and shall be construed in accordance with English law.

- (2) The Issuer hereby agrees for the benefit of the Company that the courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceedings arising out of or in connection with this Agreement may be brought in such courts.

IN WITNESS whereof this Agreement has been entered into on the date hereinbefore stated.

**Torens Limited**

By: 

**EA Investment Services Limited**

By:

1576

EA Investment Services Limited  
C/o Citco Building  
Wickhams Cay  
PO Box 662  
Road Town, Tortola  
British Virgin Islands

Torens Limited  
19 Mount Havelock,  
Douglas,  
Isle of Man  
IM1 2QG

20 May 2000

Dear Sirs,

We refer to the 1000 covered call warrants issued by Torens Limited on 28 April 2000 relating to a basket of shares in various US technology companies (the "Warrants" or "Global Warrant"), all of which were subscribed for by EA Investments Limited pursuant to the terms of a subscription agreement of the same date (the "Subscription Agreement"). We also refer to the sale by Torens Limited of the Basket Shares to Jackstones Limited, which we believe took place on 19 May 2000 (the "Sale Date").

Capitalised terms not otherwise defined in this letter shall bear the same meanings given to them in the Subscription Agreement and/or in the Global Warrant.

The purpose of this letter is to confirm that:

- (a) on the understanding that the Warrants are now uncovered as a result of such sale to Jackstones Limited, we have immediately exercised our Put Right with respect to all of the Warrants outstanding (all of which continue to be held by EA Investments Limited as of today's date); and
- (b) the Issuer Account as of today's date is credited with \$58,611,000 (being the sum of the subscription monies for the Warrants) together with \$250,724.83 accrued interest (giving a total credit balance of \$58,861,724.83).

In the exercise of the Put Right, we hereby deliver all of the Warrants to you and relinquish in full any future entitlement with respect thereto and, in accordance with clause 6(c) of the Subscription Agreement, shall forthwith treat the payment by you for such Warrants as having been satisfied by us debiting in full the total amount currently standing to the credit of the Issuer Account (including accrued interest).

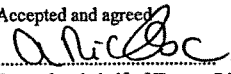
This letter shall be governed by and construed in accordance with English law.

Please indicate your acceptance of the above by signing and returning to us a copy of this letter enclosed for that purpose.

Yours sincerely,

.....  
For and on behalf of EA Investments Limited

Accepted and agreed



.....  
For and on behalf of Torens Limited

1577

EA Investment Services Limited  
C/o Citco Building  
Wickhams Cay  
PO Box 662  
Road Town, Tortola  
British Virgin Islands

Torens Limited  
19 Mount Havelock,  
Douglas,  
Isle of Man  
IM1 2QG

Dated Effective the 20<sup>th</sup> day of May 2000

Dear Sirs,

We refer to the 1000 covered call warrants issued by Torens Limited on 28 April 2000 relating to a basket of shares in various US technology companies (the "Warrants" or "Global Warrant"), all of which were subscribed for by EA Investments Limited pursuant to the terms of a subscription agreement of the same date (the "Subscription Agreement"). We also refer to the sale by Torens Limited of the Basket Shares to Jackstones Limited, which we believe took place on 19 May 2000 (the "Sale Date").

Capitalised terms not otherwise defined in this letter shall bear the same meanings given to them in the Subscription Agreement and/or in the Global Warrant.

The purpose of this letter is to confirm that:

- (a) on the understanding that the Warrants are now uncovered as a result of such sale to Jackstones Limited, we have immediately exercised our Put Right with respect to all of the Warrants outstanding (all of which continue to be held by EA Investments Limited as of today's date); and
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In the exercise of the Put Right, we hereby deliver all of the Warrants to you and relinquish in full any future entitlement with respect thereto and, in accordance with clause 6(c) of the Subscription Agreement, shall forthwith treat the payment by you for such Warrants as having been satisfied by us debiting in full the total amount currently standing to the credit of the Issuer Account (including accrued interest).

This letter shall be governed by and construed in accordance with English law.

Please indicate your acceptance of the above by signing and returning to us a copy of this letter enclosed for that purpose.

Yours sincerely,

.....  
For and on behalf of EA Investments Limited

Accepted and agreed

.....  
For and on behalf of Torens Limited

**B**



THE WARRANTS REPRESENTED BY THIS GLOBAL WARRANT (THE "WARRANTS") HAVE NOT BEEN REGISTERED AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND TRADING IN THE WARRANTS HAS NOT BEEN APPROVED BY THE UNITED STATES COMMODITY FUTURES TRADING COMMISSION (THE "CFTC") UNDER THE UNITED STATES COMMODITY EXCHANGE ACT (THE "COMMODITY EXCHANGE ACT"). THE WARRANTS, OR INTERESTS THEREIN, MAY NOT AT ANY TIME BE OFFERED, SOLD, RESOLD, TRADED OR DELIVERED, DIRECTLY OR INDIRECTLY, IN THE UNITED STATES OF AMERICA (INCLUDING THE STATES AND THE DISTRICT OF COLUMBIA), ITS TERRITORIES, ITS POSSESSIONS AND OTHER AREAS SUBJECT TO ITS JURISDICTION ("UNITED STATES") OR DIRECTLY OR INDIRECTLY OFFERED, SOLD, RESOLD, TRADED OR DELIVERED TO, OR FOR THE ACCOUNT OR BENEFIT OF ANY PERSON ("U.S. PERSON") WHO IS (I) AN INDIVIDUAL WHO IS A CITIZEN OR RESIDENT OF THE UNITED STATES; OR (II) A CORPORATION, PARTNERSHIP OR OTHER ENTITY ORGANISED IN OR UNDER THE LAWS OF THE UNITED STATES OR ANY POLITICAL SUBDIVISION THEREOF OR WHICH HAS ITS PRINCIPAL PLACE OF BUSINESS IN THE UNITED STATES; OR (III) ANY ESTATE OR TRUST WHICH IS SUBJECT TO UNITED STATES FEDERAL INCOME TAXATION REGARDLESS OF THE SOURCE OF ITS INCOME; OR (IV) ANY TRUST IF A COURT WITHIN THE UNITED STATES IS ABLE TO EXERCISE PRIMARY SUPERVISION OVER THE ADMINISTRATION OF THE TRUST AND IF ONE OR MORE UNITED STATES TRUSTEES HAVE THE AUTHORITY TO CONTROL ALL SUBSTANTIAL DECISIONS OF THE TRUST; OR (V) A PENSION PLAN FOR THE EMPLOYEES, OFFICERS OR PRINCIPALS OF A CORPORATION, PARTNERSHIP OR OTHER ENTITY DESCRIBED IN (II) ABOVE; OR (VI) ANY ENTITY ORGANISED PRINCIPALLY FOR PASSIVE INVESTMENT, TEN PER CENT OR MORE OF THE BENEFICIAL INTERESTS IN WHICH ARE HELD BY PERSONS DESCRIBED IN (I) THROUGH (V) ABOVE IF SUCH ENTITY WAS FORMED PRINCIPALLY FOR THE PURPOSE OF INVESTMENT BY SUCH PERSONS IN A COMMODITY POOL THE OPERATOR OF WHICH IS EXEMPT FROM CERTAIN REQUIREMENTS FROM PART 4 OF THE CFTC'S REGULATIONS BY VIRTUE OF ITS PARTICIPANTS BEING NON-U.S. PERSONS; OR (VII) ANY OTHER "U.S. PERSON" AS SUCH TERM MAY BE DEFINED IN REGULATIONS UNDER THE SECURITIES ACT OR IN REGULATIONS ADOPTED UNDER THE COMMODITY EXCHANGE ACT. IN ADDITION IN THE ABSENCE OF RELIEF FROM THE CFTC, OFFERS, SALES, RE-SALES, TRADES OR DELIVERIES OF WARRANTS, OR INTERESTS THEREIN, DIRECTLY OR INDIRECTLY IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF U.S. PERSONS MAY CONSTITUTE A VIOLATION OF UNITED STATES LAW GOVERNING COMMODITIES TRADING, CONSEQUENTLY, ANY OFFER, SALE, RE-SALE, TRADE OR DELIVERY MADE, DIRECTLY OR INDIRECTLY, WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF A U.S. PERSON WILL NOT BE RECOGNISED.

**BURGUNDY LIMITED**  
The ("Issuer")  
**GLOBAL CALL WARRANT**  
In relation to

A Basket of Basket Shares of Companies in the US Technology Sector due 10 May 2005

This global warrant (the "Global Warrant") represents a duly authorised issue of 1000 warrants (the "Warrants" and each one a "Warrant") in relation to a Basket of Shares of Companies in the US Technology Sector 10 May 2005. The Global Warrant is subject to the attached terms and conditions (the "Conditions").

The Global Warrant shall be governed by and construed in accordance with English law.

In witness whereof this Global Warrant has been executed by Burgundy Limited as a deed poll and delivered on the day and year first below written.

Dated 10 May 2000

SIGNED as a deed  
by Burgundy Limited



In the presence of: N. Oates

Witness' signature N. Oates

Name: NAUGHTEN OATES

Address: 19 Mount Flavelock  
Douglas 107

## TERMS AND CONDITIONS OF WARRANTS

### 1. Definitions

In these conditions:

**"Announcement Date"** means (i) in respect of a Nationalisation, the date of the first public announcement of a firm intention to nationalise (whether or not amended or on the terms originally announced) that leads to the Nationalisation and (ii) in respect of an Insolvency, the date of the first public announcement of the institution of a proceeding or presentation of a petition or passing of a resolution (or other analogous procedure in any jurisdiction) that leads to the Insolvency, in each case as determined by the Issuer.

**"Basket"** means, with respect to a Warrant, a basket of shares comprising the Basket Shares specified in Schedule A hereto.

**"Basket Share"** means any share that is for the time being comprised in the Basket.

**"Basket Share Exchange"** means, with respect to a Basket Share, NASDAQ, or such other stock exchange as the Issuer shall determine to be the principal stock exchange on which a Basket Share is listed or traded.

**"Delivery Disruption"** means, in the opinion of the Issuer, the failure of the Issuer to deliver on the Shares Settlement Date the requisite number of Basket Shares that is due solely to illiquidity in the market for such Basket Shares.

**"EAIB"** means European American Investment Bank, a financial institution organised under the laws of Austria.

**"Exercise Business Day"** means, in respect of any Warrant, a day (other than Saturday or Sunday) during the Exercise period on which banks in London are open for business.

**"Exchange Notice"** means a notice substantially in the form of the Exercise Notice as set out in Schedule A to these Conditions.

**"Exercise Period"** means the period commencing from 10.00am (London time) on the Issue Date to 10.00am (London time) on the Expiration Date.

**"Exercise Price"** means USD \$178,478 per Warrant, less an amount (if any) equal to the net amount of any dividends payable on the Share Entitlement which are reflected by a change from cum dividend quotation to ex dividend quotation of the Basket Shares on the relevant Basket Exchange(s) on any day falling after the Trade Date and on or before the Exercise Date.

**"Expiration Date"** means 10 May 2005.

**"USD"** means lawful currency of the United States of America.

**"Insolvency"** means that by reason of the voluntary or involuntary liquidation, bankruptcy or insolvency of or any analogous proceeding affecting the issuer of the Basket Shares are required to be transferred to a trustee, liquidator or other similar official, or (if holders of the Basket Shares become legally prohibited from transferring them.

**“Merger Date”** means, in respect of a Merger Event, the date upon which all holders of the necessary number of Basket Shares to constitute a Merger Event (other than, in the case of a take-over offer, Basket Shares owned or controlled by the offeror) have agreed to or have irrevocably become obliged to transfer their Basket Shares.

**“Merger Event”** means, in respect of the Basket Shares, any (i) reclassification or change of such Basket Shares that results in a transfer of or an irrevocable commitment to transfer all such Basket Shares outstanding; (ii) consolidation, amalgamation or merger of the issuer of the Basket Shares with or into another entity (other than a consolidation, amalgamation or merger in which the issuer of the Basket Shares is the continuing entity and which does not result in any such reclassification or change of all such Basket Shares outstanding); or (iii) other take-over offer for such Basket Shares that result in a transfer of or an irrevocable commitment to transfer all such Basket Shares (other than such Basket Shares owned or controlled by the offeror), in each case if the Merger Date is on or before the Expiration Date.

**“Merger Event Settlement Amount”** means an amount as determined by the Issuer which shall seek to preserve for the Holder(s) (as defined under Clause 2) the economic equivalent of any payment or delivery (assuming satisfaction of each applicable condition precedent) to which the Holder(s) would have been entitled under the Warrant(s) after the date but for the occurrence of the Merger Event.

**“Nationalisation”** means, with respect to any of the Basket Shares, all the Basket Shares or all the assets or substantially all the assets of the issuer of the Basket Shares are nationalised, expropriated or are otherwise required to be transferred to any governmental agency, authority or entity.

**“Nationalisation/Insolvency Settlement Amount”** means an amount determined by the Issuer which shall seek to preserve for the Holders(s) the economic equivalent of any payment or delivery (assuming satisfaction of each applicable condition precedent) to which the Holder(s) would have been entitled under the Warrant (s) after that date but for the occurrence of the Nationalisation or Insolvency (as the case may be).

**“New Shares”** means shares (whether of the offeror or a third party).

**“Other Consideration”** means cash and/or any securities (other than New Shares) or assets (whether of the offeror or a third party).

**“Potential Adjustment Event”** means, with respect to any of the Basket Shares:

- (a) a subdivision, consolidation or reclassification of the Basket Shares (unless a Merger Event), or a free distribution or dividend of any such Basket Shares to existing holders by way of a bonus, capitalisation or similar issue;
- (b) a distribution or dividend to existing holders of the Basket Shares of (i) such Basket Shares, or (ii) other share capital or securities granting the right to payment of dividends and/or the proceeds of liquidation of the issuer of the Basket Shares equally or proportionately with such payments to holders of such Basket Shares, or (iii) any other type of securities, rights or warrants or other assets, in any case for payment (cash or other) at less than the prevailing market price as determined by the Issuer;
- (c) an extraordinary dividend;

- (d) a call by the issuer of the Basket Shares whether out of profits or capital and whether the consideration for such repurchase is cash, securities or otherwise; or
- (e) any other similar event that may have a diluting or concentrative effect on the theoretical value of the Basket Shares.

**"Settlement Business Day"** means a day (other than Saturday or Sunday) on which each (i) banks in New York and the relevant Settlement System are open for business.

**"Settlement Disruption"** means, in the opinion of the Issuer, any circumstance beyond the control of the Issuer as a result of which the relevant Settlement System cannot clear the transfer of the appropriate number of Basket Shares.

**"Settlement System"** means, with respect to Basket Shares, the system through which such shares are customarily settled or any successor to such respective settlements systems. If the relevant settlement system ceases to settle the Basket Shares, the Issuer will, in its sole discretion, determine another manner of settlement of such Basket Shares.

**"Share Entitlement"** means one Basket of Shares per Warrant.

**"Share Settlement Date"** means, subject to Condition 6, the fifth Settlement Business Day after the Exercise Date.

**"Issue Date"** means 10 May 2000.

## 2. Form and Transfer

The Warrants will at all times be represented by a Global Warrant which will not itself be transferable and which will be deposited with the EAIB. Definitive warrants will not be issued.

Notwithstanding any notice to the contrary, the person for the time being appearing in the books of EAIB as the holder of a Warrant shall, for all purposes, be treated by the Issuer and all other persons as the person who is from time to time entitled to exercise the Warrants, being the person who is recorded in the books of EAIB as the holder thereof (the **"Holder"** and, collectively, the **"Holders"**).

All transactions involving the Warrants (including transfers), in the open market or otherwise, must be affected through an account at, and in accordance with any applicable rules and procedures of EAIB. Title to each Warrant will pass upon registration of the transfer in the books of the relevant Clearing System. The minimum trading lot for the Warrants is one Warrant and multiples of one Warrant thereafter.

## 3. Status

The Warrants (i) constitute unsecured and unsubordinated obligations of the Issuer, (ii) rank equally among themselves and (iii) at the date the Warrants were issued rank equally with all other present and future unsecured and unsubordinated obligations of the Issuer, other than obligations preferred by law. The underlying assets do not constitute obligations of the Issuer and the issue of Warrants shall not result in any rights or obligations arising on the Holder or the Issuer in respect of such underlying assets. Neither the Issuer nor the Holder is obliged (but it may) to purchase, hold or deliver (other than in accordance with these Conditions) any underlying assets.

The Warrants are not secured by any of the Basket Shares or any other securities.

#### **4. Exercise Rights**

##### **(a) Exercise Rights**

Each Warrant will, when duly exercised in accordance with the terms and conditions set out below, entitle the Holder to purchase from the Issuer the Basket of Basket Shares in consideration of the payment of the Exercise Price.

##### **(b) Issuer's Obligations**

In no event shall the Issuer have any liability for indirect, incidental or consequential damages (whether or not it has been advised of the possibility of such damages).

The exercise and settlement of the Warrants is subject to all applicable fiscal and other laws, regulations and practices in force on and following the Exercise Date and/or the Share Settlement Date.

The Issuer shall not incur any liability whatsoever if, after using its reasonable efforts, it is unable to effect the transactions contemplated as a result of any such laws, regulations or practices.

##### **(c) Prescription**

If an Exercise Notice for a Warrant has not been duly completed and delivered in accordance with the provisions of Condition 5 set out below, by 10:00am (London time) on the Expiration Date, then that Warrant shall become void.

#### **5. Exercise Procedure**

##### **(a) Exercise Notice**

Subject to the exercise by the Issuer of the Issuer Call Right in accordance with Condition 12, or the to prior cancellation by the Issuer in accordance with the provisions of Condition 13, the Warrants may be exercised on any Exercise Business Day by the Holder delivering a duly completed Exercise Notice to EAIB on or before 10.00am (London time) on such day (the "Exercise Date"). Any Exercise Notice delivered after 10.00am on any such day shall be deemed to have been delivered on the immediately succeeding Exercise Business Day.

The Exercise Notice shall be in substantially the form set out in Schedule B hereto.

##### **(b) Verification**

Upon receiving an Exercise Notice, EAIB, shall verify that the person exercising the Warrants specified in the Exercise Notice is the Holder of those Warrants according to its books. Subject to such verification, EAIB will confirm to the Issuer the number of Warrants being exercised.

If the number of Warrants being exercised specified in the Exercise Notice exceeds the number of Warrants in the warrant account specified in the relevant Exercise Notice, the Exercise Notice will be deemed to be null and void and EAIB, will notify the Issuer accordingly. If the number of Warrants being exercised specified in the Exercise specified in the Exercise Notice does not exceed the number of Warrants in EAIB's account specified in

the relevant Exercise Notice, then EAIB, will, on or before the Share Settlement Date, debit the account of the relevant Holder with the Warrants being exercised.

The Issuer will notify Holders as soon as reasonably practicable after it becomes aware of any Exercise Notice being invalid.

(c) Settlement

If a Warrant has been duly exercised in accordance with these conditions then on the Share Settlement Date the relevant Holder shall pay to the Issuer the Exercise Price and the Issuer shall transfer to the relevant Holder the Share Entitlement.

Such payment and such delivery will be made through the appropriate Settlement System at the account or by reference to an identification code notified to the Holders by the Warrant Agent, in the case of the Issuer, and, in the case of the Holders, as set out in the Exercise Notice, on a delivery against payments basis (wherever possible through relevant Settlement System).

(d) Effect of Exercise

Unless the exercise is determined to be improper, (i) the delivery of an Exercise Notice in relation to a Warrant shall constitute an irrevocable election and undertaking by the Holder to exercise that Warrant and (ii) after delivery of the Exercise Notice the relevant Holder may not transfer either legal or beneficial ownership of, or otherwise deal with, the Warrants being exercised. Notwithstanding this, if following the delivery of an Exercise Notice, any Holder does transfer or attempt to transfer the Warrants referred to in the Exercise Notice (the "Exercised Warrants"), then the Holder will be liable to the Issuer for any losses, reasonable costs and expenses suffered or incurred by the Issuer including those suffered as result of the Issuer terminating any related hedging arrangements as a result of receiving the relevant Exercise Notice and subsequently (i) entering into replacement hedging arrangements in respect of the Exercised Warrants or (ii) paying any amount in relation to the Exercised Warrants either with or without having entered into replacement hedging arrangements.

(e) Expenses

A Holder exercising a Warrant shall pay (i) all expenses including, without limitation, all stamp, issue, registration, securities transfer or other similar taxes or duties ("expenses"), if any, payable in connection with the issue and/or exercise of the Warrants, (ii) all expenses involved in delivering the Exercise Notice.

(f) Determinations

Any determination as to whether a Warrant has been properly exercised shall be made by the Issuer and shall be conclusive and binding on the Holder of that Warrant. Any attempt to exercise a Warrant that is determined to be improper shall be null and void and a further attempt will be determined in relation to when the subsequent Exercise Notice is delivered. The Issuer and EAIB will endeavour to notify the Holder of an improperly exercised Warrant of the improper exercise as soon as possible upon becoming aware of such improper exercise. In the absence of negligence or wilful misconduct, the Issuer or EAIB, will not be liable to any person for any action taken or omitted to be taken by it in connection with the notification or determination of an improper exercise. The Issuer will not under any circumstances be liable for any acts or defaults of EAIB in relation to the performance of their duties in relation to the Warrants.

**(g) Global Warrant**

When a Warrant is exercised, the Issuer will advise EAIB, and EAIB will note the exercise on the Global Warrant and the number of Warrants represented by such Global Warrant shall be reduced by the cancellation of the Warrants exercised.

**6. Settlement Disruption**

If in the opinion of the Issuer there is a Settlement Disruption in relation to the Basket Shares which prevents delivery of such Basket Shares on the original Share Settlement Date, the Share Settlement Date will be the first succeeding day on which there is no Settlement Disruption provided always that, if Settlement Disruption prevents settlement on each of the 10 Settlement Business Days immediately following the original Share Settlement Date, (i) if such Basket Shares can be delivered in any other commercially reasonable manner, then the Share Settlement Date will be the first day on which settlement of a sale of Basket Shares executed on that 10<sup>th</sup> Settlement Business Day customarily would take place using such other commercially reasonable manner of delivery, and (ii) if such Shares cannot be delivered in any other commercially reasonable manner, then the Share Settlement Date will be postponed until delivery can be effected through the relevant Settlement System or in any other commercially reasonable manner.

**7. Delivery Disruption**

If in the opinion of the Issuer there is a Delivery Disruption in relation to the Basket Shares and the Issuer has notified the relevant Holder(s) within one Settlement System Business Day following the Exercise Date to that effect, then the Issuer may:

- (a) determine the obligation of the Holder(s) and/or the Issuer to deliver such Basket Shares and the Issuer will pay an amount as it determines shall seek to preserve for the Holder(s) the economic equivalent of the relevant receipt or delivery, as the case may be, (assuming satisfaction of each applicable condition precedent) to which the Holder(s) would have been entitled under the Warrant(s) after that date but for the occurrence of such Delivery Disruption, in which event the entitlements of the respective exercising Holder(s) to deliver or receive (as the case may be) such Basket Shares pursuant to such exercise shall cease and the Issuer's obligations under the Warrant(s) shall be satisfied in full upon payment of such amount; or
- (b) determine that the Issuer shall deliver on the Share Settlement Date such number of Basket Shares as it can deliver on that date and that the Issuer shall pay an amount which it determines shall seek to preserve for the Holder(s) the economic equivalent of the delivery or receipt (as the case may be) of the remainder of the Basket Shares (assuming satisfaction of each applicable condition precedent) to which the Holder(s) would have been entitled under the Warrant(s) after that date but for the occurrence of such Delivery Disruption, in which event the entitlements of the respective exercising Holder(s) to deliver or receive (as the case may be) such Basket Shares pursuant to such exercise shall cease and the Issuer's obligations under the Warrant(s) shall be satisfied in full upon payment of such amount.

**8. Adjustment**

The Issuer shall determine whether or not at any time a Potential Adjustment Event has occurred in relation to the Basket Shares and where it determines that such an event has occurred, the Issuer will determine whether such Potential Adjustment Event has a diluting or concentrative effect on the theoretical value of the Basket Shares and, if so, will make such adjustment as it considers appropriate, if any, to the Conditions (including adjusting the Share

Exercise Price and/or the Share Entitlement, which the Issuer determines to be appropriate to account for that diluting or concentrative effect and determine the effective date(s) of such adjustment(s).

#### **9. Merger Event**

If, in the opinion of the Issuer, a Merger Event has occurred in relation to the Basket Shares, then the Issuer may:

- (a) make such adjustment as it considers appropriate, if any, to the Conditions (including adjusting the Share Exercise Price and/or the Share Entitlement), to account for such Merger Event and determine the effective date(s) of such adjustment(s); or
- (b) determine that the Warrants shall be terminated, in which case the Warrants shall cease to be exercisable as of the Merger Date, (or in the case of any Warrants which have been exercised but remain unsettled, the entitlements of the respective exercising Holder(s) to sell the Basket Shares pursuant to such exercise shall cease) and the Issuer's obligations under the Warrants shall be satisfied in full upon payment of the Merger Event Settlement Amount.

#### **10. Nationalisation or Insolvency**

If, in the opinion of the Issuer, a Nationalisation or an Insolvency has occurred in relation to any of the Basket Shares, then the Issuer may:

- (a) make such adjustment as it considers appropriate, if any, to the Conditions (including adjusting the Basket of Basket Shares, Exercise Price and/or the Share Entitlement), which the Issuer determines to be appropriate to account for such Nationalisation and/or Insolvency (as the case may be) and determine the effective date(s) of such adjustment(s); or
- (b) determine that the Warrants shall be terminated, in which case the Warrants shall cease to be exercisable as of the Announcement Date, (or in the case of the Warrants which have been exercised but remain unsettled, the entitlements of the respective exercising Holder(s) to sell Basket Shares pursuant to such exercise shall cease) and the Issuer's obligations under the Warrants shall be satisfied in full upon payment of the Nationalisation/Insolvency Settlement Amount.

#### **11. Illegality and Force Majeure**

The Issuer shall have the right to terminate its obligations under the Warrants if it determines that it is or will become unlawful or impractical for it to carry out all or any of its obligations under the Warrants for any reason including, without limitation, as a result of compliance with any applicable present or future law, rule, regulation, judgement, order or directive or with any requirement or request of any governmental, administrative, legislative or judicial authority or power. In such circumstances, the Issuer shall, if and to the extent permitted by applicable law, pay to each Holder in respect of each Warrant held by him an amount determined by the Issuer as representing the fair market value of such Warrant immediately prior to such termination (ignoring such illegality or impracticality), less the cost to the Issuer of, or the loss realised by the Issuer on, unwinding any underlying related hedge arrangements, all as determined by the Issuer.



**12. Issuer Call Right**

The Issuer shall have the right (but not the obligation) to call for all (but not some only) of the Warrants outstanding at any time during the period commencing on the Issue Date and ending on the date falling 270 days thereafter upon giving no less than 10 (ten) days prior written notice to the Holders in accordance with Condition 20(b) stating the date (the "Call Date") upon which the call of Warrants is to be made. Warrants may be exercised at any time up to the Exercise Business Day immediately prior to the Call Date and any Warrants not so exercised shall, subject to payment of the Call Price (as defined below), be cancelled and be of no further effect on the Call Date. On the Call Date, the Issuer shall credit to the account of each Holder (as such account(s) are notified to it by the Holders for such purpose) an amount equal to the Call Price per Warrant owned by the relevant Holder.

For the purpose of the foregoing, the "Call Price" shall be an amount equal to the greater of (a) the subscription price for each Warrant (the "Subscription Price") plus interest thereon for the period commencing on the Issue Date and ending on the Call Date (both dates inclusive) at a rate equal to the rate of interest at which the Issuer deposited money, or would have been able to deposit money, during entirety of that period and (b) the Subscription Price plus 50 per cent of the positive intrinsic value of each Warrant (if any) as at the Call Date.

**13. Purchase and Cancellation**

The Issuer or any of its affiliates may at any time purchase one or more of the Warrants at any price in the open market, by tender, by private treaty or otherwise. If a Warrant is purchased by the Issuer or its affiliate it may be cancelled, held or re-sold or otherwise dealt with. No Warrant that has been exercised or purchased and cancelled may be re-issued.

**14. Failure to Cover**

For so long as the Warrants remain outstanding, the Issuer hereby undertakes:

- (a) to hold as beneficial owner all of the shares comprised in the Basket or otherwise to have enforceable rights to receive on demand delivery of such shares; and
- (b) not to accept, assume or undertake any liability relating to any or all of the shares comprised in the Basket (whether conditional or unconditional, present or future) insofar as any such liability would, if performed, impair or otherwise limit the Issuer's ability to satisfy its obligations with respect to the Warrants

provided that, if either (a) and (b) are at any time not satisfied by the Issuer, then the Issuer shall nevertheless be deemed to be in compliance with this undertaking if it also owns at that time readily realisable assets (which, for these purposes, shall include cash balances and listed securities) having an aggregate value of at least three times the amount that would be required to comply with (a) and (b) above (whether in purchasing additional shares or unwinding any liability).

In the event that the Issuer fails to maintain its undertaking under Condition 14.1 above, and does not remedy such remission within 10 days of such failure, then the Issuer shall be required to exercise its rights to call the Warrants from each Holder pursuant to Condition 12.

**15. Taxation**

The Issuer is not liable for or otherwise obliged to pay, and the relevant Holder shall pay, any tax, duty, charges, withholding or other payment which may arise as a result of, or in connection with the issue, ownership, transfer, exercise or enforcement of any Warrant,

including, without limitation, the delivery of any amount of Basket Shares. The Issuer shall have the right, but not the duty, to withhold or deduct from any amount payable to the Holder, such amount as is necessary (i) for the payment of any such taxes, duties, charges, withholdings or other payments or (ii) for effecting reimbursement in accordance with the following sentence. The relevant Holder shall promptly reimburse the Issuer, if the Issuer is obliged to pay any tax, duty, charge, withholding or other payment referred to in this condition.

#### **16. Invalidity and Modification**

Should any of the provisions contained in these Conditions be or become invalid, the validity of the remaining provisions shall not be affected in any way. The Issuer will endeavour in good faith to replace the invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid or unenforceable provisions.

The Issuer may modify the Conditions without the consent of the Holders for the purposes of curing any ambiguity or correcting or supplementing any provision contained herein in any manner which the Issuer may deem necessary or desirable provided that such modification is not materially prejudicial to the interests of the Holders. Notice of any such modification will be given to the Holders in accordance with Condition 20, but failure to give, or non-receipt of, such notice will not affect the validity of such modification.

#### **17. Further Issues**

The Issuer may, from time to time without the consent of the Holders, create and issue further Warrants which form a single series with the Warrants.

#### **18. Substitution**

The Issuer may at any time, and from time to time, without the consent of the Holders, substitute for itself as obligor under the Warrants, any subsidiary or holding company of the Issuer or any subsidiary of such holding company which at the time of such substitution has the same credit rating as the Issuer (the "New Issuer"), provided that the New Issuer shall assume all obligations that the Issuer owes to the Holders under or in relation to the Warrants. If such substitution occurs, then any reference in these conditions to the Issuer shall be construed as a reference to the New Issuer. Any substitution will be promptly notified to the Holder in accordance with these conditions. In connection with any exercise by the Issuer of the right of the Substitution, the Issuer shall not be obliged to have regard to any of the consequences suffered by individual Holders as a result of the exercise by the Issuer of the right of substitution, including consequences resulting from the Holders being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of any particular territory. No Holder shall be entitled to claim from the Issuer any indemnification or repayment in respect of any consequence suffered by the Holder as a result of the exercise by the Issuer of the right of substitution.

#### **19. Governing Law**

The Warrants are governed by and construed in accordance with the laws of England. The Issuer hereby irrevocably agrees for the exclusive benefit of each Holder that the courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with the Warrants and that accordingly any suit, action or proceeding (together in this paragraph referred to as "Proceedings") arising out of or in connection with the Warrants may be brought in such courts. Nothing in this paragraph shall limit the right of the bearer of

any Warrant to take Proceedings in any other court of competent jurisdiction, whether concurrently or not.

**20. Warrant Agent**

The Initial "Warrant Agent" is European American Investment Bank and its specified office is its head office at Suite 10 Lillengasse 1, 3<sup>rd</sup> Floor, A-1010, Vienna.

The Issuer reserves the right at any time to vary or terminate the appointment of EAIB and to appoint other or additional Warrant Agents. Notice of any such termination or appointment and of any changes in the specified office of EAIB will be given to the Holders in accordance with these Conditions.

EAIB is acting solely as agent of the Issuer and does not assume any obligation or duty to, or any relationship of agency or trust for or with, any Holder.

**21. Notices**

**(a) To the Issuer**

Notice may be given to the Issuer by delivering the notice in writing to the Issuer at 19 Mount Havelock, Douglas, Isle of Man or such other address as may notified to the Holders in accordance with these Conditions.

**(b) To the Holders**

Any notice to the Holders will be deemed to have been duly given to the Holders if the notice is given to EAIB for onward transmission to the Holders. Any such notice shall be deemed to have been given by the Issuer to the Holders on the date the notice is given to EAIB.

**22. Determinations of the Issuer**

All calculations, determinations or other decisions by the Issuer pursuant to these Conditions (including where a matter is to be decided by reference to the Issuer's opinion) shall (save in the case of manifest error) be made in the Issuer's sole and absolute discretion and shall be final and binding on the Holder. The Issuer shall not have any responsibility for any errors or omissions in the calculation and determination of the any payment due under Conditions 6 to 12 arising from such errors or omissions.

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**SCHEDULE A**

**Share Basket**

<b>Stock Ticker</b>	<b>Company</b>	<b>No of Shares in Basket</b>
VRSN	Verisign, Inc.	100,000
CNXT	Conextent Systems, Inc.	390,000
CMGI	CMGI, Inc.	245,000
ICGE	Internet Capital Group, Inc.	115,000
CMRC	Commerce One, Inc.	300,000
YHOO	Yahoo! Inc.	110,000
CTXS	Citrix Systems, Inc.	400,000
ATHM	AtHome	650,000
DCLK	DoubleClick Inc.	330,000

**SCHEDULE B**

**THIS EXERCISE NOTICE SHALL NOT BE EFFECTIVE UNLESS THE APPROPRIATE CERTIFICATION AS TO NON-BENEFICIAL OWNERSHIP HAS ALSO BEEN DELIVERED WHERE REQUIRED**

**Burgundy Limited  
Warrants  
In relation to**

a Basket of Shares of Companies in the US Technology Sector due 10 May 2005

**Exercise Notice for Warrants**

1. Name of the Holder of the Warrants  
(if joint Holders, insert all names)
2. Address of the Holder  
(if joint Holders, insert the address of the first named Holder)
3. Number of Warrants being exercised
4. Warrant Account Details  
  
The Holder irrevocably instructs EAIB to debit its account, on or before the Share Settlement Date, with the Number of Warrants specified in section 3 of this notice.
5. Undertaking  
  
The Holder undertakes to pay all expenses, including, without limitation, any applicable stamp duty and or any other duties or taxes due in connection with the exercise by the Holder of the Warrants and the Holder irrevocably instructs EAIB (i) to debit the account specified in section 4 of this notice with an amount equal to the sum of any such expenses, duties or taxes and (ii) to pay such expenses, duties or taxes.
6. Signature of the Holder  
  
(If joint Holder's, all Holder's must sign)
7. Date of this Notice

1592

**Dated 10 May, 2000**

**Burgundy Limited**

**US Call Warrants due 2005**

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**SUBSCRIPTION AGREEMENT**

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**THIS SUBSCRIPTION AGREEMENT (the "Agreement")** is made on 10 May 2000, between:

- (1) Burgundy Limited (the "Issuer"); and
- (2) EA Investment Services Limited, a company organised under the laws of the British Virgin Isles (the "Company").

**WHEREAS:**

The parties wish to record the arrangements between them for the issue by the Issuer of 1000 USD covered call warrants due 2005 (the "Warrants", which expression where the context so admits shall include the Global Warrant (as defined below) to be delivered in respect of them).

**IT IS AGREED** as follows:

**1. ISSUE AND SUBSCRIPTION**

- (a) Subject to the terms and conditions of this Agreement, the Issuer agrees to issue the Warrants on 10 May 2000 or on such later date as the Issuer and the Company may agree (the "Closing Date"). The Warrants will be subscribed for at a subscription price of US\$57,863 per Warrant (the "Subscription Price").
- (b) The Company hereby agrees to subscribe and pay for, or to procure subscriptions and payment for, the Warrants on the Closing Date at the Subscription Price subject to the terms of this Agreement.

**2. CLOSING**

- (a) On the Closing Date, the Issuer will issue and deliver to the Company or to its order a duly executed global warrant representing the Warrants (the "Global Warrant").
- (b) Against such delivery the Company will pay or cause to be paid to the Issuer in immediately available funds the subscription monies for the Warrant (being the Subscription Price of the Warrant).
- (c) The Issuer hereby authorises and instructs such payment(s) to be credited to an account of the Issuer at the Company (the "Issuer Account"), which monies shall remain so credited until the expiry or exercise by holders of the Warrants (on a pro rata basis in the case of only some of the Warrants being exercised) or until the exercise of the Put Right in accordance with clause 6 below.

**3. UNDERTAKINGS BY THE ISSUER**

The Issuer undertakes with the Company as follows:

- (a) the Issuer will pay any stamp, issue, registration, documentary, transaction or other taxes and duties, including interest and penalties, payable on or in connection with the creation, issue and offering of the Warrants or the execution or delivery of this Agreement; and

- (b) the Issuer will forthwith notify the Company if at any time prior to payment of the subscription monies to the Issuer on the Closing Date anything occurs which renders or may render untrue or incorrect in any respect any of the representations and warranties contained in clause 5 and will forthwith take such steps as the Company may reasonably require to remedy and/or publicise the fact.

#### 4. REPRESENTATIONS AND WARRANTIES

As a condition of the obligation of the Company to subscribe and pay for or procure subscriptions and payment for the Warrant, the Issuer represents and warrants to the Company that:

- (a) the Warrants are at the date of issue fully covered as a result of the Issuer holding, or having the unconditional right to call for, the Basket Shares (as defined in the Global Warrant);
- (b) it is duly incorporated and validly existing under the laws of the Isle of Man with full power and authority to own its assets and to conduct a business;
- (c) all necessary actions, authorisations, conditions and things (including, without limitation, any necessary filings, registrations and consents) required to be taken, given, fulfilled and done by or on behalf of the Issuer in the Isle of Man have been, or will be, taken, given, fulfilled and done in connection with the issue of the Warrants on or before the Closing Date;
- (d) no consent, approval, authorisation, licence or qualification of or with any court or governmental agency or body is required and no other action or thing is required to be taken, fulfilled or done in relation to this paragraph 4(d) which has not been taken, fulfilled or done on or prior to the date hereof by the Issuer for the execution and delivery of the Agreement and the issue and distribution of the Warrants and the performance of the terms of the Warrants;
- (e) the matters referred to in paragraph 4(d) above do not and will not:
  - (i) infringe, conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, the documents constituting the Issuer, or any indenture, trust deed, mortgage or other agreement or instrument to which the Issuer or any of its subsidiaries is a party or by which it or any of its properties is bound; or
  - (ii) conflict with any existing applicable law, rule, regulation, judgment, order or decree of any government, governmental body, administrative agency or court, domestic or foreign, having jurisdiction over the Issuer, any such subsidiary or any of its properties.
- (f) this Agreement has been duly authorised, executed and delivered by the Issuer and constitutes valid and legally binding obligations of the Issuer enforceable in accordance with their respective terms subject to the laws of bankruptcy and other laws affecting the rights of creditors generally;



- (g) the Warrants have been duly authorised by the Issuer and, when duly executed, authenticated and issued will constitute valid and legally binding obligations of the Issuer enforceable in accordance with their respective terms subject to the laws of bankruptcy and other laws affecting the rights of creditors generally;
- (h) there are no pending actions, suits or proceedings against or affecting the Issuer or any of its subsidiaries or any of its properties which, if determined adversely to the Issuer or any such subsidiary, would individually or in the aggregate have a material adverse effect on the condition (financial or other), prospects, results of operations or general affairs of the Issuer or on the ability of the Issuer to perform its obligations under this Agreement or the Warrants or which are otherwise material in the context of the issue of the Warrant and, to the best of the Issuer's knowledge, no such actions, suits or proceedings are threatened or contemplated;
- (i) no stamp or other duty is assessable or payable in, and no withholding or deduction for any taxes, duties, assessments or governmental charges of whatever nature is imposed or made for or on account of any income, registration, transfer or turnover taxes, customs or other duties or taxes of any kind, levied, collected, withheld or assessed by or within, the Isle of Man in connection with the authorisation, execution or delivery of this Agreement or with the authorisation, execution, issue, sale or delivery of the Warrants;
- (j) no event has occurred or circumstance arisen which, had the Warrant been issued, might (or with the giving of notice and/or the lapse of time and/or the fulfilment of any other requirement might) constitute an "Event of Default" as defined in the terms and conditions of the Warrants;
- (k) that neither the Issuer, its affiliates nor any persons acting on its behalf has made or will make offers or sales of securities under circumstances that would require the registration of the Warrants under the United States Securities Act of 1933.

##### 5. CONDITIONS PRECEDENT

This Agreement and the obligations of the Company are conditional upon:

- (a) there having been, as at the Closing Date, no adverse change which is material in the context of the issue of the Warrants, in the financial or other condition of the Issuer, nor any breach of, nor any event rendering untrue, misleading or incorrect in any material respect, any of the warranties of the Issuer contained herein, nor any breach by the Issuer of any of its obligations hereunder;
- (b) the Issuer holding, or having the unconditional right to call for the Basket of Shares (as defined in the Global Warrant) on the Closing Date.

##### 6. PUT RIGHT

- (a) If at any time prior to the expiry of the Warrants, the Issuer no longer holds, or no longer has the right to call for the Basket of Basket Shares, then the Company shall have the right (the "Put Right") to put back to the Issuer all or any Warrants then outstanding which at such time it continues to hold for its own account.

- (b) In the event that the Company exercises the Put Right in accordance with clause 6(a), then it shall deliver to the Issuer the Warrants in respect of which such right is exercised and shall, if appropriate, amend the Global Warrant accordingly.
- (c) In exchange for the delivery of such Warrants to the Issuer, the Issuer shall be liable to pay to the Company an amount per Warrant equal to the Subscription Price plus interest thereon for the period commencing on the Closing Date and ending on the date of delivery by the Bank at a rate equal to the rate of interest payable on the Issuer Account, which payment shall be satisfied and discharged by the Company debiting the Issuer Account by the appropriate amount.

#### 7. INDEMNITY

The Issuer agrees to indemnify and hold harmless the Company and its respective directors, officers, employees (each an "Indemnified Person") from and against any and all losses, claims, damages, liabilities, judgments and expenses (including, but not limited to, legal costs and expenses) which it may incur, or which may be made against it caused by or arising out of any breach or alleged breach of any of the representations, warranties, undertakings or agreements contained in, or any certificate issued by the Issuer pursuant to, this Agreement. The amount paid or payable by an Indemnified Person as a result of such losses, claims, damages, liabilities, judgments or expenses shall include any legal or other expense incurred by such Indemnified Person in connection with investigating or defending such claim.

#### 8. TERMINATION

The Company may by notice given at any time prior to payment of the subscription monies for the Warrants to the Issuer terminate this Agreement if:

- (a) any of the representations and warranties contained in clause 4 shall have been untrue in any material respect at the time of making thereof or shall subsequently have become untrue in any material respect or in the event of failure to perform any of the Issuer's undertakings or agreements in this Agreement; or
  - (b) on the Closing Date any of the conditions specified in clause 5 has not been satisfied or waived by the Company; or
  - (c) in the opinion of the Company, there shall have been since the date hereof, any change, or any development involving a prospective change, in national or international monetary, financial, political or economic conditions or currency exchange rates or foreign exchange controls such as would in the view of the Company be likely to prejudice materially the success of the offering and distribution of the Warrant or dealings in the Warrant in the secondary market.
- (2) Upon such notice being given, the parties hereto shall be released and discharged from their obligations hereunder.


#### 9. GOVERNING LAW AND JURISDICTION

- (1) This Agreement is governed by, and shall be construed in accordance with English law.


- (2) The Issuer hereby agrees for the benefit of the Company that the courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceedings arising out of or in connection with this Agreement may be brought in such courts.

IN WITNESS whereof this Agreement has been entered into on the date hereinbefore stated.

**Burgundy Limited**

By:   
DIRECTOR

**EA Investment Services Limited**

  
By: Fay Roberts, Director

1598

EA Investment Services Limited  
C/o Citco Building  
Wickhams Cay  
PO Box 662  
Road Town, Tortola  
British Virgin Islands

Burgundy Limited  
19 Mount Havelock,  
Douglas,  
Isle of Man  
IM1 2QG

Dated effective the 6<sup>th</sup> day of June 2000

Dear Sirs,

We refer to the 1000 covered call warrants issued by Burgundy Limited on 10 May 2000 relating to a basket of shares in various US technology companies (the "Warrants"), all of which were subscribed for by EA Investments Limited pursuant to the terms of a subscription agreement of the same date (the "Subscription Agreement"). We also refer to the sale by Burgundy Limited of the Basket Shares to Jackstones Limited, which we believe took place on 5 June 2000 (the "Sale Date").

Capitalised terms not otherwise defined in this letter shall bear the same meanings given to them in the Subscription Agreement and/or in the Global Warrant.

The purpose of this letter is to confirm that:

- (a) on the understanding that the Warrants are now uncovered as a result of such sale to Jackstones Limited, we have immediately exercised our Put Right with respect to all of the Warrants outstanding (all of which continue to be held by EA Investments Limited as of today's date); and
- (b) the Issuer Account as of today's date is credited with \$57,863,000 (being the sum of the subscription monies for the Warrants) together with \$303,780.75 accrued interest (giving a total credit balance of \$58,166,780.75).

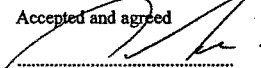
In the exercise of the Put Right, we hereby deliver all of the Warrants to you and relinquish in full any future entitlement with respect thereto and, in accordance with clause 6(c) of the Subscription Agreement, shall forthwith treat the payment by you for such Warrants as having been satisfied by us debiting in full the total amount currently standing to the credit of the Issuer Account (including accrued interest).

This letter shall be governed by and construed in accordance with English law.

Please indicate your acceptance of the above by signing and returning to us a copy of this letter enclosed for that purpose.

Yours sincerely,

  
.....  
For and on behalf of EA Investment Services Limited

Accepted and agreed  
  
.....  
For and on behalf of Burgundy Limited

C

THE WARRANTS REPRESENTED BY THIS GLOBAL WARRANT (THE "WARRANTS") HAVE NOT BEEN REGISTERED AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND TRADING IN THE WARRANTS HAS NOT BEEN APPROVED BY THE UNITED STATES COMMODITY FUTURES TRADING COMMISSION (THE "CFTC") UNDER THE UNITED STATES COMMODITY EXCHANGE ACT (THE "COMMODITY EXCHANGE ACT"). THE WARRANTS, OR INTERESTS THEREIN, MAY NOT AT ANY TIME BE OFFERED, SOLD, RESOLD, TRADED OR DELIVERED, DIRECTLY OR INDIRECTLY, IN THE UNITED STATES OF AMERICA (INCLUDING THE STATES AND THE DISTRICT OF COLUMBIA), ITS TERRITORIES, ITS POSSESSIONS AND OTHER AREAS SUBJECT TO ITS JURISDICTION ("UNITED STATES") OR DIRECTLY OR INDIRECTLY OFFERED, SOLD, RESOLD, TRADED OR DELIVERED TO, OR FOR THE ACCOUNT OR BENEFIT OF ANY PERSON ("U.S. PERSON") WHO IS (I) AN INDIVIDUAL WHO IS A CITIZEN OR RESIDENT OF THE UNITED STATES; OR (II) A CORPORATION, PARTNERSHIP OR OTHER ENTITY ORGANISED IN OR UNDER THE LAWS OF THE UNITED STATES OR ANY POLITICAL SUBDIVISION THEREOF OR WHICH HAS ITS PRINCIPAL PLACE OF BUSINESS IN THE UNITED STATES; OR (III) ANY ESTATE OR TRUST WHICH IS SUBJECT TO UNITED STATES FEDERAL INCOME TAXATION REGARDLESS OF THE SOURCE OF ITS INCOME; OR (IV) ANY TRUST IF A COURT WITHIN THE UNITED STATES IS ABLE TO EXERCISE PRIMARY SUPERVISION OVER THE ADMINISTRATION OF THE TRUST AND IF ONE OR MORE UNITED STATES TRUSTEES HAVE THE AUTHORITY TO CONTROL ALL SUBSTANTIAL DECISIONS OF THE TRUST; OR (V) A PENSION PLAN FOR THE EMPLOYEES, OFFICERS OR PRINCIPALS OF A CORPORATION, PARTNERSHIP OR OTHER ENTITY DESCRIBED IN (II) ABOVE; OR (VI) ANY ENTITY ORGANISED PRINCIPALLY FOR PASSIVE INVESTMENT, TEN PER CENT OR MORE OF THE BENEFICIAL INTERESTS IN WHICH ARE HELD BY PERSONS DESCRIBED IN (I) THROUGH (V) ABOVE IF SUCH ENTITY WAS FORMED PRINCIPALLY FOR THE PURPOSE OF INVESTMENT BY SUCH PERSONS IN A COMMODITY POOL THE OPERATOR OF WHICH IS EXEMPT FROM CERTAIN REQUIREMENTS FROM PART 4 OF THE CFTC'S REGULATIONS BY VIRTUE OF ITS PARTICIPANTS BEING NON-U.S. PERSONS; OR (VII) ANY OTHER "U.S. PERSON" AS SUCH TERM MAY BE DEFINED IN REGULATIONS UNDER THE SECURITIES ACT OR IN REGULATIONS ADOPTED UNDER THE COMMODITY EXCHANGE ACT. IN ADDITION IN THE ABSENCE OF RELIEF FROM THE CFTC, OFFERS, SALES, RE-SALES, TRADES OR DELIVERIES OF WARRANTS, OR INTERESTS THEREIN, DIRECTLY OR INDIRECTLY IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF U.S. PERSONS MAY CONSTITUTE A VIOLATION OF UNITED STATES LAW GOVERNING COMMODITIES TRADING, CONSEQUENTLY, ANY OFFER, SALE, RE-SALE, TRADE OR DELIVERY MADE, DIRECTLY OR INDIRECTLY, WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF A U.S. PERSON WILL NOT BE RECOGNISED.

**PLATINUM TRADING PARTNERS, LLC**

(the "Issuer")

**GLOBAL CALL WARRANT**

In relation to a

Basket of Shares of Companies in the US Technology Sector due 29 November 2005

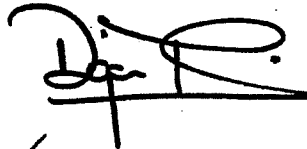
This global warrant (the "Global Warrant") represents a duly authorised issue of 1000 warrants (the "Warrants" and each one a "Warrant") in relation to a Basket of Shares of Companies in the US Technology Sector due 29 November 2005. The Global Warrant is subject to the attached terms and conditions (the "Conditions").

The Global Warrant shall be governed by and construed in accordance with English law.

In witness whereof this Global Warrant has been executed by Platinum Trading Partners, LLC as a deed poll and delivered on the day and year first below written.

Dated 29 November 2000

SIGNED as a deed  
by Platinum Trading Partners, LLC )



In the presence of: .....  
Witness' signature: *A. Shaikh*

Name: *ARFAN SHAIKH*

Address: *1 GREAT CLIMBURN PLACE  
LONDON W1H 7AL*

## TERMS AND CONDITIONS OF WARRANTS

### 1. Definitions

In these conditions:

**"Announcement Date"** means (i) in respect of a Nationalisation, the date of the first public announcement of a firm intention to nationalise (whether or not amended or on the terms originally announced) that leads to the Nationalisation and (ii) in respect of an Insolvency, the date of the first public announcement of the institution of a proceeding or presentation of a petition or passing of a resolution (or other analogous procedure in any jurisdiction) that leads to the Insolvency, in each case as determined by the Issuer.

**"Basket"** means, with respect to a Warrant, a basket of shares comprising the Basket Shares specified in Schedule A hereto.

**"Basket Share"** means any share that is for the time being comprised in the Basket.

**"Share Exchange"** means, with respect to a Basket Share, NASDAQ, or such other stock exchange as the Issuer shall determine to be the principal stock exchange on which a Basket Share is listed or traded.

**"Delivery Disruption"** means, in the opinion of the Issuer, the failure of the Issuer to deliver on the Shares Settlement Date the requisite number of Basket Shares that is due solely to illiquidity in the market for such Basket Shares.

**"EAIB"** means European American Investment Bank, a financial institution organised under the laws of Austria.

**"Exchange Notice"** means a notice substantially in the form of the Exercise Notice as set out in Schedule A to these Conditions.

**"Exercise Price"** means USD \$83,698 per Warrant, less an amount (if any) equal to the net amount of any dividends payable on the Share Entitlement which are reflected by a change from cum dividend quotation to ex dividend quotation of the Basket Shares on the relevant Share Exchange(s) on any day falling after the Trade Date and on or before the Exercise Date.

**"Exercise Date"** means 29 November 2005.

**"USD"** means lawful currency of the United States of America.

**"Insolvency"** means that by reason of the voluntary or involuntary liquidation, bankruptcy or insolvency of or any analogous proceeding affecting the issuer of the Basket Shares are required to be transferred to a trustee, liquidator or other similar official, or (if holders of the Basket Shares become legally prohibited from transferring them.

**"Merger Date"** means, in respect of a Merger Event, the date upon which all holders of the necessary number of Basket Shares to constitute a Merger Event (other than, in the case of a take-over offer, Basket Shares owned or controlled by the offeror) have agreed to or have irrevocably become obliged to transfer their Basket Shares.

**"Merger Event"** means, in respect of the Basket Shares, any (i) reclassification or change of such Basket Shares that results in a transfer of or an irrevocable commitment to transfer all such Basket Shares outstanding: (ii) consolidation, amalgamation or merger of the issuer of

the Basket Shares with or into another entity (other than a consolidation, amalgamation or merger in which the issuer of the Basket Shares is the continuing entity and which does not result in any such reclassification or change of all such Basket Shares outstanding); or (iii) other take-over offer for such Basket Shares that result in a transfer of or an irrevocable commitment to transfer all such Basket Shares (other than such Basket Shares owned or controlled by the offeror), in each case if the Merger Date is on or before the Expiration Date.

**“Merger Event Settlement Amount”** means an amount as determined by the Issuer which shall seek to preserve for the Holder(s) (as defined under Clause 2) the economic equivalent of any payment or delivery (assuming satisfaction of each applicable condition precedent) to which the Holder(s) would have been entitled under the Warrant(s) after the date but for the occurrence of the Merger Event.

**“Nationalisation”** means, with respect to any of the Basket Shares, all the Basket Shares or all the assets or substantially all the assets of the issuer of the Basket Shares are nationalised, expropriated or are otherwise required to be transferred to any governmental agency, authority or entity.

**“Nationalisation/Insolvency Settlement Amount”** means an amount determined by the Issuer which shall seek to preserve for the Holders(s) the economic equivalent of any payment or delivery (assuming satisfaction of each applicable condition precedent) to which the Holder(s) would have been entitled under the Warrant (s) after that date but for the occurrence of the Nationalisation or Insolvency (as the case may be).

**“New Shares”** means shares (whether of the offeror or a third party).

**“Other Consideration”** means cash and/or any securities (other than New Shares) or assets (whether of the offeror or a third party).

**“Potential Adjustment Event”** means, with respect to any of the Basket Shares:

- (a) a subdivision, consolidation or reclassification of the Basket Shares (unless a Merger Event), or a free distribution or dividend of any such Basket Shares to existing holders by way of a bonus, capitalisation or similar issue;
- (b) a distribution or dividend to existing holders of the Basket Shares of (i) such Basket Shares, or (ii) other share capital or securities granting the right to payment of dividends and/or the proceeds of liquidation of the issuer of the Basket Shares equally or proportionately with such payments to holders of such Basket Shares, or (iii) any other type of securities, rights or warrants or other assets, in any case for payment (cash or other) at less than the prevailing market price as determined by the Issuer;
- (c) an extraordinary dividend;
- (d) a call by the issuer of the Basket Shares whether out of profits or capital and whether the consideration for such repurchase is cash, securities or otherwise; or
- (e) any other similar event that may have a diluting or concentrative effect on the theoretical value of the Basket Shares.

**“Settlement Business Day”** means a day (other than Saturday or Sunday) on which each (i) banks in New York and the relevant Settlement System are open for business.



**"Settlement Disruption"** means, in the opinion of the Issuer, any circumstance beyond the control of the Issuer as a result of which the relevant Settlement System cannot clear the transfer of the appropriate number of Basket Shares.

**"Settlement System"** means, with respect to Basket Shares, the system through which such shares are customarily settled or any successor to such respective settlements systems. If the relevant settlement system ceases to settle the Basket Shares, the Issuer will, in its sole discretion, determine another manner of settlement of such Basket Shares.

**"Share Entitlement"** means one Basket of Shares per Warrant.

**"Share Settlement Date"** means, subject to Condition 6, the fifth Settlement Business Day after the Exercise Date.

**"Issue Date"** means 29 November 2000.

## **2. Form and Transfer**

The Warrants will at all times be represented by a Global Warrant which will not itself be transferable and which will be deposited with the EAIB. Definitive warrants will not be issued.

Notwithstanding any notice to the contrary, the person for the time being appearing in the books of EAIB as the holder of a Warrant shall, for all purposes, be treated by the Issuer and all other persons as the person who is from time to time entitled to exercise the Warrants, being the person who is recorded in the books of EAIB as the holder thereof (the **"Holder"** and, collectively, the **"Holders"**).

All transactions involving the Warrants (including transfers), in the open market or otherwise, must be affected through an account at, and in accordance with any applicable rules and procedures of EAIB. Title to each Warrant will pass upon registration of the transfer in the books of the relevant Clearing System. The minimum trading lot for the Warrants is one Warrant and multiples of one Warrant thereafter.

## **3. Status**

The Warrants (i) constitute unsecured and unsubordinated obligations of the Issuer, (ii) rank equally among themselves and (iii) at the date the Warrants were issued rank equally with all other present and future unsecured and unsubordinated obligations of the Issuer, other than obligations preferred by law. The underlying assets do not constitute obligations of the Issuer and the issue of Warrants shall not result in any rights or obligations arising on the Holder or the Issuer in respect of such underlying assets. Neither the Issuer nor the Holder is obliged (but it may) to purchase, hold or deliver (other than in accordance with these Conditions) any underlying assets.

The Warrants are not secured by any of the Basket Shares or any other securities.

## **4. Exercise Rights**

### **(a) Exercise Rights**

Each Warrant will, when duly exercised in accordance with the terms and conditions set out below, entitle the Holder to purchase from the Issuer the Basket in consideration of the payment of the Exercise Price.

**(b) Issuer's Obligations**

In no event shall the Issuer have any liability for indirect, incidental or consequential damages (whether or not it has been advised of the possibility of such damages).

The exercise and settlement of the Warrants is subject to all applicable fiscal and other laws, regulations and practices in force on and following the Exercise Date and/or the Share Settlement Date.

The Issuer shall not incur any liability whatsoever if, after using its reasonable efforts, it is unable to effect the transactions contemplated as a result of any such laws, regulations or practices.

**(c) Prescription**

If an Exercise Notice for a Warrant has not been duly completed and delivered in accordance with the provisions of Condition 5 set out below, by 10:00am (London time) on the Expiration Date, then that Warrant shall become void.

**5. Exercise Procedure****(a) Exercise Notice**

Subject to the exercise by the Issuer of the Issuer Call Right in accordance with Condition 12, or the to prior cancellation by the Issuer in accordance with the provisions of Condition 13, the Warrants may be exercised on the Exercise Date by the Holder delivering a duly completed Exercise Notice to EAIB on or before 12.00am (London time) on such day. Any Exercise Notice delivered after 12.00am on the Exercise Date shall be void and of no effect.

The Exercise Notice shall be in substantially the form set out in Schedule B hereto.

**(b) Verification**

Upon receiving an Exercise Notice, EAIB, shall verify that the person exercising the Warrants specified in the Exercise Notice is the Holder of those Warrants according to its books. Subject to such verification, EAIB will confirm to the Issuer the number of Warrants being exercised.

If the number of Warrants being exercised specified in the Exercise Notice exceeds the number of Warrants in the warrant account specified in the relevant Exercise Notice, the Exercise Notice will be deemed to be null and void and EAIB, will notify the Issuer accordingly. If the number of Warrants being exercised specified in the Exercise specified in the Exercise Notice does not exceed the number of Warrants in EAIB's account specified in the relevant Exercise Notice, then EAIB, will, on or before the Share Settlement Date, debit the account of the relevant Holder with the Warrants being exercised.

The Issuer will notify Holders as soon as reasonably practicable after it becomes aware of any Exercise Notice being invalid.

**(c) Settlement**

If a Warrant has been duly exercised in accordance with these conditions then on the Share Settlement Date the relevant Holder shall pay to the Issuer the Exercise Price and the Issuer shall transfer to the relevant Holder the Share Entitlement.

Such payment and such delivery will be made through the appropriate Settlement System at the account or by reference to an identification code notified to the Holders by the Warrant Agent, in the case of the Issuer, and, in the case of the Holders, as set out in the Exercise Notice, on a delivery against payments basis (wherever possible through relevant Settlement System).

**(d) Effect of Exercise**

Unless the exercise is determined to be improper, (i) the delivery of an Exercise Notice in relation to a Warrant shall constitute an irrevocable election and undertaking by the Holder to exercise that Warrant and (ii) after delivery of the Exercise Notice the relevant Holder may not transfer either legal or beneficial ownership of, or otherwise deal with, the Warrants being exercised. Notwithstanding this, if following the delivery of an Exercise Notice, any Holder does transfer or attempt to transfer the Warrants referred to in the Exercise Notice (the "Exercised Warrants"), then the Holder will be liable to the Issuer for any losses, reasonable costs and expenses suffered or incurred by the Issuer including those suffered as result of the Issuer terminating any related hedging arrangements as a result of receiving the relevant Exercise Notice and subsequently (i) entering into replacement hedging arrangements in respect of the Exercised Warrants or (ii) paying any amount in relation to the Exercised Warrants either with or without having entered into replacement hedging arrangements.

**(e) Expenses**

A Holder exercising a Warrant shall pay (i) all expenses including, without limitation, all stamp, issue, registration, securities transfer or other similar taxes or duties ("expenses"), if any, payable in connection with the issue and/or exercise of the Warrants, (ii) all expenses involved in delivering the Exercise Notice.

**(f) Determinations**

Any determination as to whether a Warrant has been properly exercised shall be made by the Issuer and shall be conclusive and binding on the Holder of that Warrant. Any attempt to exercise a Warrant that is determined to be improper shall be null and void and a further attempt will be determined in relation to when the subsequent Exercise Notice is delivered. The Issuer and EAIB will endeavour to notify the Holder of an improperly exercised Warrant of the improper exercise as soon as possible upon becoming aware of such improper exercise. In the absence of negligence or wilful misconduct, the Issuer or EAIB, will not be liable to any person for any action taken or omitted to be taken by it in connection with the notification or determination of an improper exercise. The Issuer will not under any circumstances be liable for any acts or defaults of EAIB in relation to the performance of their duties in relation to the Warrants.

**(g) Global Warrant**

When a Warrant is exercised, the Issuer will advise EAIB, and EAIB will note the exercise on the Global Warrant and the number of Warrants represented by such Global Warrant shall be reduced by the cancellation of the Warrants exercised.

**6. Settlement Disruption**

If in the opinion of the Issuer there is a Settlement Disruption in relation to the Basket Shares which prevents delivery of such Basket Shares on the original Share Settlement Date, the Share Settlement Date will be the first succeeding day on which there is no Settlement Disruption provided always that, if Settlement Disruption prevents settlement on each of the

10 Settlement Business Days immediately following the original Share Settlement Date, (i) if such Basket Shares can be delivered in any other commercially reasonable manner, then the Share Settlement Date will be the first day on which settlement of a sale of Basket Shares executed on that 10<sup>th</sup> Settlement Business Day customarily would take place using such other commercially reasonable manner of delivery, and (ii) if such Shares cannot be delivered in any other commercially reasonable manner, then the Share Settlement Date will be postponed until delivery can be effected through the relevant Settlement System or in any other commercially reasonable manner.

#### **7. Delivery Disruption**

If in the opinion of the Issuer there is a Delivery Disruption in relation to the Basket Shares and the Issuer has notified the relevant Holder(s) within one Settlement System Business Day following the Exercise Date to that effect, then the Issuer may:

- (a) determine the obligation of the Holder(s) and/or the Issuer to deliver such Basket Shares and the Issuer will pay an amount as it determines shall seek to preserve for the Holder(s) the economic equivalent of the relevant receipt or delivery, as the case may be, (assuming satisfaction of each applicable condition precedent) to which the Holder(s) would have been entitled under the Warrant(s) after that date but for the occurrence of such Delivery Disruption, in which event the entitlements of the respective exercising Holder(s) to deliver or receive (as the case may be) such Basket Shares pursuant to such exercise shall cease and the Issuer's obligations under the Warrant(s) shall be satisfied in full upon payment of such amount; or
- (b) determine that the Issuer shall deliver on the Share Settlement Date such number of Basket Shares as it can deliver on that date and that the Issuer shall pay an amount which it determines shall seek to preserve for the Holder(s) the economic equivalent of the delivery or receipt (as the case may be) of the remainder of the Basket Shares (assuming satisfaction of each applicable condition precedent) to which the Holder(s) would have been entitled under the Warrant(s) after that date but for the occurrence of such Delivery Disruption, in which event the entitlements of the respective exercising Holder(s) to deliver or receive (as the case may be) such Basket Shares pursuant to such exercise shall cease and the Issuer's obligations under the Warrant(s) shall be satisfied in full upon payment of such amount.

#### **8. Adjustment**

The Issuer shall determine whether or not at any time a Potential Adjustment Event has occurred in relation to the Basket Shares and where it determines that such an event has occurred, the Issuer will determine whether such Potential Adjustment Event has a diluting or concentrative effect on the theoretical value of the Basket Shares and, if so, will make such adjustment as it considers appropriate, if any, to the Conditions (including adjusting the Share Exercise Price and/or the Share Entitlement, which the Issuer determines to be appropriate to account for that diluting or concentrative effect and determine the effective date(s) of such adjustment(s).

#### **9. Merger Event**

If, in the opinion of the Issuer, a Merger Event has occurred in relation to the Basket Shares, then the Issuer may:

- (a) make such adjustment as it considers appropriate, if any, to the Conditions (including adjusting the Share Exercise Price and/or the Share Entitlement), to account for such Merger Event and determine the effective date(s) of such adjustment(s); or

- (b) determine that the Warrants shall be terminated, in which case the Warrants shall cease to be exercisable as of the Merger Date, (or in the case of any Warrants which have been exercised but remain unsettled, the entitlements of the respective exercising Holder(s) to sell the Basket Shares pursuant to such exercise shall cease) and the Issuer's obligations under the Warrants shall be satisfied in full upon payment of the Merger Event Settlement Amount.

#### **10. Nationalisation or Insolvency**

If, in the opinion of the Issuer, a Nationalisation or an Insolvency has occurred in relation to any of the Basket Shares, then the Issuer may:

- (a) make such adjustment as it considers appropriate, if any, to the Conditions (including adjusting the Basket of Basket Shares, Exercise Price and/or the Share Entitlement), which the Issuer determines to be appropriate to account for such Nationalisation and/or Insolvency (as the case may be) and determine the effective date(s) of such adjustment(s); or
- (b) determine that the Warrants shall be terminated, in which case the Warrants shall cease to be exercisable as of the Announcement Date, (or in the case of the Warrants which have been exercised but remain unsettled, the entitlements of the respective exercising Holder(s) to sell Basket Shares pursuant to such exercise shall cease) and the Issuer's obligations under the Warrants shall be satisfied in full upon payment of the Nationalisation/Insolvency Settlement Amount.

#### **11. Illegality and Force Majeure**

The Issuer shall have the right to terminate its obligations under the Warrants if it determines that it is or will become unlawful or impractical for it to carry out all or any of its obligations under the Warrants for any reason including, without limitation, as a result of compliance with any applicable present or future law, rule, regulation, judgement, order or directive or with any requirement or request of any governmental, administrative, legislative or judicial authority or power. In such circumstances, the Issuer shall, if and to the extent permitted by applicable law, pay to each Holder in respect of each Warrant held by him an amount determined by the Issuer as representing the fair market value of such Warrant immediately prior to such termination (ignoring such illegality or impracticality), less the cost to the Issuer of, or the loss realised by the Issuer on, unwinding any underlying related hedge arrangements, all as determined by the Issuer.

#### **12. Issuer Call Right**

The Issuer shall have the right (but not the obligation) to call for all (but not some only) of the Warrants outstanding at any time during the period commencing on the Issue Date and ending on the date falling 270 days thereafter upon giving no less than 10 (ten) days prior written notice to the Holders in accordance with Condition 20(b) stating the date (the "Call Date") upon which the call of Warrants is to be made. On the Call Date, the Issuer shall credit to the account of each Holder (as such account(s) are notified to it by the Holders for such purpose) an amount equal to the Call Price per Warrant owned by the relevant Holder and upon such payment that Holder's Warrants shall be cancelled and be of no further effect.

For the purpose of the foregoing, the "Call Price" shall be an amount equal to the greater of (a) the subscription price for each Warrant (the "Subscription Price") plus interest thereon for the period commencing on the Issue Date and ending on the Call Date (both dates inclusive) at a rate equal to the rate of interest at which the Issuer deposited money, or would have been

able to deposit money, during entirety of that period and (b) the Subscription Price plus 50 per cent of the positive intrinsic value of each Warrant (if any) as at the Call Date.

### **13. Purchase and Cancellation**

The Issuer or any of its affiliates may at any time purchase one or more of the Warrants at any price in the open market, by tender, by private treaty or otherwise. If a Warrant is purchased by the Issuer or its affiliate it may be cancelled, held or re-sold or otherwise dealt with. No Warrant that has been exercised or purchased and cancelled may be re-issued.

### **14. Failure to Cover**

For so long as the Warrants remain outstanding, the Issuer hereby undertakes:

- (a) to hold as beneficial owner all of the shares comprised in the Basket or otherwise to have enforceable rights to receive on demand delivery of such shares; and
- (b) not to accept, assume or undertake any liability relating to any or all of the shares comprised in the Basket (whether conditional or unconditional, present or future) insofar as any such liability would, if performed, impair or otherwise limit the Issuer's ability to satisfy its obligations with respect to the Warrants

provided that, if either (a) and (b) are at any time not satisfied by the Issuer, then the Issuer shall nevertheless be deemed to be in compliance with this undertaking if it also owns at that time readily realisable assets (which, for these purposes, shall include cash balances and listed securities) having an aggregate value of at least three times the amount that would be required to comply with (a) and (b) above (whether in purchasing additional shares or unwinding any liability).

In the event that the Issuer fails to maintain its undertaking under Condition 14.1 above, and does not remedy such remission within 10 days of such failure, then the Issuer shall be required to exercise its rights to call the Warrants from each Holder pursuant to Condition 12.

### **15. Taxation**

The Issuer is not liable for or otherwise obliged to pay, and the relevant Holder shall pay, any tax, duty, charges, withholding or other payment which may arise as a result of, or in connection with the issue, ownership, transfer, exercise or enforcement of any Warrant, including, without limitation, the delivery of any amount of Basket Shares. The Issuer shall have the right, but not the duty, to withhold or deduct from any amount payable to the Holder, such amount as is necessary (i) for the payment of any such taxes, duties, charges, withholdings or other payments or (ii) for effecting reimbursement in accordance with the following sentence. The relevant Holder shall promptly reimburse the Issuer, if the Issuer is obliged to pay any tax, duty, charge, withholding or other payment referred to in this condition.

### **16. Invalidity and Modification**

Should any of the provisions contained in these Conditions be or become invalid, the validity of the remaining provisions shall not be affected in any way. The Issuer will endeavour in good faith to replace the invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid or unenforceable provisions.

The Issuer may modify the Conditions without the consent of the Holders for the purposes of curing any ambiguity or correcting or supplementing any provision contained herein in any manner which the Issuer may deem necessary or desirable provided that such modification is not materially prejudicial to the interests of the Holders. Notice of any such modification will be given to the Holders in accordance with Condition 20, but failure to give, or non-receipt of, such notice will not affect the validity of such modification.

#### **17. Further Issues**

The Issuer may, from time to time without the consent of the Holders, create and issue further Warrants which form a single series with the Warrants.

#### **18. Substitution**

The Issuer may at any time, and from time to time, without the consent of the Holders, substitute for itself as obligor under the Warrants, any subsidiary or holding company of the Issuer or any subsidiary of such holding company which at the time of such substitution has the same credit rating as the Issuer (the "New Issuer"), provided that the New Issuer shall assume all obligations that the Issuer owes to the Holders under or in relation to the Warrants. If such substitution occurs, then any reference in these conditions to the Issuer shall be construed as a reference to the New Issuer. Any substitution will be promptly notified to the Holder in accordance with these conditions. In connection with any exercise by the Issuer of the right of the Substitution, the Issuer shall not be obliged to have regard to any of the consequences suffered by individual Holders as a result of the exercise by the Issuer of the right of substitution, including consequences resulting from the Holders being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of any particular territory. No Holder shall be entitled to claim from the Issuer any indemnification or repayment in respect of any consequence suffered by the Holder as a result of the exercise by the Issuer of the right of substitution.

#### **19. Governing Law**

The Warrants are governed by and construed in accordance with the laws of England. The Issuer hereby irrevocably agrees for the exclusive benefit of each Holder that the courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with the Warrants and that accordingly any suit, action or proceeding (together in this paragraph referred to as "Proceedings") arising out of or in connection with the Warrants may be brought in such courts. Nothing in this paragraph shall limit the right of the bearer of any Warrant to take Proceedings in any other court of competent jurisdiction, whether concurrently or not.

#### **20. Warrant Agent**

The Initial "Warrant Agent" is European American Investment Bank and its specified office is its head office at Suite 10 Lillengasse 1, 3<sup>rd</sup> Floor, A-1010, Vienna.

The Issuer reserves the right at any time to vary or terminate the appointment of EAIB and to appoint other or additional Warrant Agents. Notice of any such termination or appointment and of any changes in the specified office of EAIB will be given to the Holders in accordance with these Conditions.

EAIB is acting solely as agent of the Issuer and does not assume any obligation or duty to, or any relationship of agency or trust for or with, any Holder.

#### **21. Notices**

**(a) To the Issuer**

Notice may be given to the Issuer by delivering the notice in writing to the Issuer at 19 Mount Havelock, Douglas, Isle of Man or such other address as may notified to the Holders in accordance with these Conditions.

**(b) To the Holders**

Any notice to the Holders will be deemed to have been duly given to the Holders if the notice is given to EAIB for onward transmission to the Holders. Any such notice shall be deemed to have been given by the Issuer to the Holders on the date the notice is given to EAIB.

**22. Determinations of the Issuer**

All calculations, determinations or other decisions by the Issuer pursuant to these Conditions (including where a matter is to be decided by reference to the Issuer's opinion) shall (save in the case of manifest error) be made in the Issuer's sole and absolute discretion and shall be final and binding on the Holder. The Issuer shall not have any responsibility for any errors or omissions in the calculation and determination of the any payment due under Conditions 6 to 12 arising from such errors or omissions.



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**SCHEDULE A**

**Share Basket**

<b>Stock Ticker</b>	<b>Company</b>	<b>No of Shares in Basket</b>
AOL	America On-Line	200,000
CCU	Clear Channel	150,000
CNXT	Conextent Systems	325,000
COMS	3Com Corporation	350,000
DCLK	DoubleClick Inc.	250,000
DELL	Dell Computer	400,000
JDSU	JDS Uniphase	110,000
INSP	InfoSpace	200,000
LU	Lucent Technology	350,000
QCOM	QualComm	75,000
<b>Total</b>		<b>2,410,000</b>

**SCHEDULE B**

**THIS EXERCISE NOTICE SHALL NOT BE EFFECTIVE UNLESS THE APPROPRIATE CERTIFICATION AS TO NON-BENEFICIAL OWNERSHIP HAS ALSO BEEN DELIVERED WHERE REQUIRED**

**Platinum Trading Partners, LLC**

**Warrants**

**In relation to**

**a Basket of Shares of Companies in the US Technology Sector due 29 November 2005**

**Exercise Notice for Warrants**

1. Name of the Holder of the Warrants  
(if joint Holders, insert all names)
2. Address of the Holder  
(if joint Holders, insert the address of the first named Holder)
3. Number of Warrants being exercised
4. Warrant Account Details

The Holder irrevocably instructs EAIB to debit its account, on or before the Share Settlement Date, with the Number of Warrants specified in section 3 of this notice.

5. Undertaking

The Holder undertakes to pay all expenses, including, without limitation, any applicable stamp duty and or any other duties or taxes due in connection with the exercise by the Holder of the Warrants and the Holder irrevocably instructs EAIB (i) to debit the account specified in section 4 of this notice with an amount equal to the sum of any such expenses, duties or taxes and (ii) to pay such expenses, duties or taxes.

6. Signature of the Holder  
(If joint Holder's, all Holder's must sign)

7. Date of this Notice

1613

**Dated 29 November 2000**

**Platinum Trading Partners, LLC**

**EA Investment Services Limited**

**US Call Warrants due 29 November 2005**

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**SUBSCRIPTION AGREEMENT**

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**THIS SUBSCRIPTION AGREEMENT** (the "Agreement") is made on 29 November 2000, between:

- (1) Platinum Trading Partners, LLC, a limited liability company organised under the laws of Delaware (the "Issuer"); and
- (2) EA Investment Services Limited, a company organised under the laws of the British Virgin Isles (the "Company").

**WHEREAS:**

The parties wish to record the arrangements between them for the issue by the Issuer of 1000 USD covered call warrants due 29 November 2005 (the "Warrants", which expression where the context so admits shall include the Global Warrant (as defined below) to be delivered in respect of them).

**IT IS AGREED** as follows:

**1. ISSUE AND SUBSCRIPTION**

- (a) Subject to the terms and conditions of this Agreement, the Issuer agrees to issue the Warrants on 29 November 2000 or on such later date as the Issuer and the Company may agree (the "Closing Date"). The Warrants will be subscribed for at a subscription price of US\$27,135 per Warrant (the "Subscription Price").
- (b) The Company hereby agrees to subscribe and pay for, or to procure subscriptions and payment for, the Warrants on the Closing Date at the Subscription Price subject to the terms of this Agreement.

**2. CLOSING**

- (a) On the Closing Date, the Issuer will issue and deliver to the Company or to its order a duly executed global warrant representing the Warrants (the "Global Warrant").
- (b) Against such delivery the Company will pay or cause to be paid to the Issuer in immediately available funds the subscription monies for the Warrant (being the Subscription Price of the Warrant).
- (c) The Issuer hereby authorises and instructs such payment(s) to be credited to an account of the Issuer at the Company (the "Issuer Account"), which monies shall remain so credited until the expiry or exercise by holders of the Warrants (on a pro rata basis in the case of only some of the Warrants being exercised) or until the exercise of the Put Right in accordance with clause 6 below.

**3. UNDERTAKINGS BY THE ISSUER**

The Issuer undertakes with the Company as follows:

- (a) the Issuer will pay any stamp, issue, registration, documentary, transaction or other taxes and duties, including interest and penalties, payable on or in connection with the creation, issue and offering of the Warrants or the execution or delivery of this Agreement; and



- (b) the Issuer will forthwith notify the Company if at any time prior to payment of the subscription monies to the Issuer on the Closing Date anything occurs which renders or may render untrue or incorrect in any respect any of the representations and warranties contained in clause 5 and will forthwith take such steps as the Company may reasonably require to remedy and/or publicise the fact.

#### 4. REPRESENTATIONS AND WARRANTIES

As a condition of the obligation of the Company to subscribe and pay for or procure subscriptions and payment for the Warrant, the Issuer represents and warrants to the Company on a continuing basis that:

- (a) the Warrants are at the date of issue fully covered as a result of the Issuer holding, or having the unconditional right to call for, the Basket Shares (as defined in the Global Warrant);
- (b) it is duly organised and validly existing under the laws of Delaware with full power and authority to own its assets and to conduct a business;
- (c) all necessary actions, authorisations, conditions and things (including, without limitation, any necessary filings, registrations and consents) required to be taken, given, fulfilled and done by or on behalf of the Issuer in Delaware have been, or will be, taken, given, fulfilled and done in connection with the issue of the Warrants on or before the Closing Date;
- (d) no consent, approval, authorisation, licence or qualification of or with any court or governmental agency or body is required and no other action or thing is required to be taken, fulfilled or done in relation to this paragraph 4(d) which has not been taken, fulfilled or done on or prior to the date hereof by the Issuer for the execution and delivery of the Agreement and the issue and distribution of the Warrants and the performance of the terms of the Warrants;
- (e) the matters referred to in paragraph 4(d) above do not and will not:
  - (i) infringe, conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, the documents constituting the Issuer, or any indenture, trust deed, mortgage or other agreement or instrument to which the Issuer or any of its subsidiaries is a party or by which it or any of its properties is bound; or
  - (ii) conflict with any existing applicable law, rule, regulation, judgment, order or decree of any government, governmental body, administrative agency or court, domestic or foreign, having jurisdiction over the Issuer, any such subsidiary or any of its properties.
- (f) this Agreement has been duly authorised, executed and delivered by the Issuer and constitutes valid and legally binding obligations of the Issuer enforceable in accordance with their respective terms subject to the laws of bankruptcy and other laws affecting the rights of creditors generally;

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- (g) the Warrants have been duly authorised by the Issuer and, when duly executed, authenticated and issued will constitute valid and legally binding obligations of the Issuer enforceable in accordance with their respective terms subject to the laws of bankruptcy and other laws affecting the rights of creditors generally;
- (h) there are no pending actions, suits or proceedings against or affecting the Issuer or any of its subsidiaries or any of its properties which, if determined adversely to the Issuer or any such subsidiary, would individually or in the aggregate have a material adverse effect on the condition (financial or other), prospects, results of operations or general affairs of the Issuer or on the ability of the Issuer to perform its obligations under this Agreement or the Warrants or which are otherwise material in the context of the issue of the Warrant and, to the best of the Issuer's knowledge, no such actions, suits or proceedings are threatened or contemplated;
- (i) no stamp or other duty is assessable or payable in, and no withholding or deduction for any taxes, duties, assessments or governmental charges of whatever nature is imposed or made for or on account of any income, registration, transfer or turnover taxes, customs or other duties or taxes of any kind, levied, collected, withheld or assessed by or within, Delaware in connection with the authorisation, execution or delivery of this Agreement or with the authorisation, execution, issue, sale or delivery of the Warrants;
- (j) no event has occurred or circumstance arisen which, had the Warrant been issued, might (or with the giving of notice and/or the lapse of time and/or the fulfilment of any other requirement might) constitute an "Event of Default" as defined in the terms and conditions of the Warrants; and
- (k) that neither the Issuer, its affiliates nor any persons acting on its behalf has made or will make offers or sales of securities under circumstances that would require the registration of the Warrants under the United States Securities Act of 1933.

## 5. CONDITIONS PRECEDENT

This Agreement and the obligations of the Company are conditional upon:

- (a) there having been, as at the Closing Date, no adverse change which is material in the context of the issue of the Warrants, in the financial or other condition of the Issuer, nor any breach of, nor any event rendering untrue, misleading or incorrect in any material respect, any of the warranties of the Issuer contained herein, nor any breach by the Issuer of any of its obligations hereunder;
- (b) the Issuer holding, or having the unconditional right to call for the Basket Shares (as defined in the Global Warrant) on the Closing Date.

## 6. PUT RIGHT

- (a) If at any time prior to the expiry of the Warrants, the Issuer no longer holds, or no longer has the right to call for the Basket Shares, then the Company shall have the right (the "Put Right") to put back to the Issuer all or any Warrants then outstanding which at such time it continues to hold for its own account.



- (b) In the event that the Company exercises the Put Right in accordance with this clause, then it shall deliver to the Issuer the Warrants in respect of which such right is exercised and shall, if appropriate, amend the Global Warrant accordingly.
- (c) In exchange for the delivery of such Warrants to the Issuer, the Issuer shall be liable to pay to the Company an amount per Warrant equal to the Subscription Price plus interest thereon for the period commencing on the Closing Date and ending on the date of delivery by the Company at a rate equal to the rate of interest payable on the Issuer Account, which payment shall be satisfied and discharged by the Company debiting the Issuer Account by the appropriate amount.

#### 7. INDEMNITY

The Issuer agrees to indemnify and hold harmless the Company and its respective directors, officers, employees (each an "Indemnified Person") from and against any and all losses, claims, damages, liabilities, judgements and expenses (including, but not limited to, legal costs and expenses) which it may incur, or which may be made against it caused by or arising out of any breach or alleged breach of any of the representations, warranties, undertakings or agreements contained in, or any certificate issued by the Issuer pursuant to, this Agreement. The amount paid or payable by an Indemnified Person as a result of such losses, claims, damages, liabilities, judgments or expenses shall include any legal or other expense incurred by such Indemnified Person in connection with investigating or defending such claim.

#### 8. TERMINATION

- (1) The Company may by notice given at any time prior to payment of the subscription monies for the Warrants to the Issuer terminate this Agreement if:
  - (a) any of the representations and warranties contained in clause 4 shall have been untrue in any material respect at the time of making thereof or shall subsequently have become untrue in any material respect or in the event of failure to perform any of the Issuer's undertakings or agreements in this Agreement; or
  - (b) on the Closing Date any of the events specified in clause 6(a) have occurred; or
  - (c) in the opinion of the Company, there shall have been since the date hereof, any change, or any development involving a prospective change, in national or international monetary, financial, political or economic conditions or currency exchange rates or foreign exchange controls such as would in the view of the Company be likely to prejudice materially the success of the offering and distribution of the Warrant or dealings in the Warrant in the secondary market.
- (2) Upon such notice being given, the parties hereto shall be released and discharged from their obligations hereunder.

#### 9. GOVERNING LAW AND JURISDICTION

- (1) This Agreement is governed by, and shall be construed in accordance with, English law.
- (2) The Issuer hereby agrees for the benefit of the Company that the courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with this

Agreement and that accordingly any suit, action or proceedings arising out of or in connection with this Agreement may be brought in such courts.

IN WITNESS whereof this Agreement has been entered into on the date hereinbefore stated.

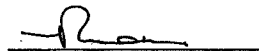
Platinum Trading Partners, LLC

By:



R. PURI, DIRECTOR, EURAM CORPORATE SERVICES LIMITED

EA Investment Services Limited



By: Fay Roberts, Director



EA Investment Services Limited  
C/o Citco Building  
Wickhams Cay  
PO Box 662  
Road Town, Tortola  
British Virgin Islands

Platinum Trading Partners, LLC  
19 Mount Havelock  
Douglas  
Isle of Man  
IM1 2QG

Dated Effective 22 December 2000

Dear Sirs,

We refer to the 1000 covered call warrants issued by Platinum Trading Partners, LLC on 29 November 2000 relating to a basket of shares in various US technology companies (the "Warrants" or "Global Warrant"), all of which were subscribed for by EA Investment Services Limited pursuant to the terms of a subscription agreement of the same date (the "Subscription Agreement"). We also refer to the sale by Platinum Trading Partners, LLC of the Basket Shares which we believe took place on 21 December 2000 (the "Sale Date").

Capitalised terms not otherwise defined in this letter shall bear the same meanings given to them in the Subscription Agreement and/or in the Global Warrant.

The purpose of this letter is to confirm that:


- (a) on the understanding that the Warrants are now uncovered as a result of such sale, we have immediately exercised our Put Right with respect to all of the Warrants outstanding (all of which continue to be held by EA Investment Services Limited as of today's date); and
- (b) the Issuer Account as of today's date is credited with \$27,135,000 (being the sum of the subscription monies for the Warrants) together with \$116,077.50 accrued interest (giving a total credit balance of \$27,251,077.50).

In the exercise of the Put Right, we hereby deliver all of the Warrants to you and relinquish in full any future entitlement with respect thereto and, in accordance with clause 6(c) of the Subscription Agreement, shall forthwith treat the payment by you for such Warrants as having been satisfied by us debiting in full the total amount currently standing to the credit of the Issuer Account (including accrued interest).

This letter shall be governed by and construed in accordance with English law.

Please indicate your acceptance of the above by signing and returning to us a copy of this letter enclosed for that purpose.

Yours sincerely,

  
.....  
For and on behalf of EA Investment Services Limited  
Signed on March 6, 2001

Accepted and agreed

.....  
For and on behalf of Platinum Trading Partners, LLC

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**Dated 1 November 2001**

**Cobalt Trading Partners LLC**

**EA Investment Services Limited**

**Call Warrants due 1 November 2006**

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**SUBSCRIPTION AGREEMENT**

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**THIS SUBSCRIPTION AGREEMENT** (the "Agreement") is made on 1 November 2001, between:

- (1) Cobalt Trading Partners LLC, a limited liability company organised under the laws of Delaware (the "Issuer"); and
- (2) EA Investment Services Limited, a company organised under the laws of the British Virgin Isles (the "Company").

**WHEREAS:**

The parties wish to record the arrangements between them for the issue by the Issuer of 1000 US\$ covered call warrants due 1 November 2006 (the "Warrants", which expression where the context so admits shall include the Global Warrant (as defined below) to be delivered in respect of them).

**IT IS AGREED** as follows:

**1. ISSUE AND SUBSCRIPTION**

- (a) Subject to the terms and conditions of this Agreement, the Issuer agrees to issue the Warrants on 1 November 2001 or on such later date as the Issuer and the Company may agree (the "Closing Date"). The Warrants will be subscribed for at a subscription price of US\$26,739 per Warrant (the "Subscription Price").
- (b) The Company hereby agrees to subscribe and pay for, or to procure subscriptions and payment for, the Warrants on the Closing Date at the Subscription Price subject to the terms of this Agreement.

**2. CLOSING**

- (a) On the Closing Date, the Issuer will issue and deliver to the Company or to its order a duly executed global warrant representing the Warrants (the "Global Warrant").
- (b) Against such delivery the Company will pay or cause to be paid to the Issuer in immediately available funds the subscription monies for the Warrant (being the Subscription Price of the Warrant).
- (c) The Issuer hereby authorises and instructs such payment(s) to be credited to an account of the Issuer at the Company (the "Issuer Account"), which monies shall remain so credited until the expiry or exercise by holders of the Warrants (on a pro rata basis in the case of only some of the Warrants being exercised) or until the exercise of the Put Right in accordance with clause 6 below.

**3. UNDERTAKINGS BY THE ISSUER**

The Issuer undertakes with the Company as follows:

- (a) the Issuer will pay any stamp, issue, registration, documentary, transaction or other taxes and duties, including interest and penalties, payable on or in connection with the creation, issue and offering of the Warrants or the execution or delivery of this Agreement; and

- (b) the Issuer will forthwith notify the Company if at any time prior to payment of the subscription monies to the Issuer on the Closing Date anything occurs which renders or may render untrue or incorrect in any respect any of the representations and warranties contained in clause 5 and will forthwith take such steps as the Company may reasonably require to remedy and/or publicise the fact.

#### 4. REPRESENTATIONS AND WARRANTIES

As a condition of the obligation of the Company to subscribe and pay for or procure subscriptions and payment for the Warrant, the Issuer represents and warrants to the Company on a continuing basis that:

- (a) the Warrants are at the date of issue fully covered as a result of the Issuer holding, or having the unconditional right to call for, the Basket Shares (as defined in the Global Warrant);
- (b) it is duly organised and validly existing under the laws of Delaware with full power and authority to own its assets and to conduct a business;
- (c) all necessary actions, authorisations, conditions and things (including, without limitation, any necessary filings, registrations and consents) required to be taken, given, fulfilled and done by or on behalf of the Issuer in Delaware have been, or will be, taken, given, fulfilled and done in connection with the issue of the Warrants on or before the Closing Date;
- (d) no consent, approval, authorisation, licence or qualification of or with any court or governmental agency or body is required and no other action or thing is required to be taken, fulfilled or done in relation to this paragraph 4(d) which has not been taken, fulfilled or done on or prior to the date hereof by the Issuer for the execution and delivery of the Agreement and the issue and distribution of the Warrants and the performance of the terms of the Warrants;
- (e) the matters referred to in paragraph 4(d) above do not and will not:
  - (i) infringe, conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, the documents constituting the Issuer, or any indenture, trust deed, mortgage or other agreement or instrument to which the Issuer or any of its subsidiaries is a party or by which it or any of its properties is bound; or
  - (ii) conflict with any existing applicable law, rule, regulation, judgment, order or decree of any government, governmental body, administrative agency or court, domestic or foreign, having jurisdiction over the Issuer, any such subsidiary or any of its properties.
- (f) this Agreement has been duly authorised, executed and delivered by the Issuer and constitutes valid and legally binding obligations of the Issuer enforceable in accordance with their respective terms subject to the laws of bankruptcy and other laws affecting the rights of creditors generally;
- (g) the Warrants have been duly authorised by the Issuer and, when duly executed, authenticated and issued will constitute valid and legally binding obligations of the Issuer

enforceable in accordance with their respective terms subject to the laws of bankruptcy and other laws affecting the rights of creditors generally;

- (h) there are no pending actions, suits or proceedings against or affecting the Issuer or any of its subsidiaries or any of its properties which, if determined adversely to the Issuer or any such subsidiary, would individually or in the aggregate have a material adverse effect on the condition (financial or other), prospects, results of operations or general affairs of the Issuer or on the ability of the Issuer to perform its obligations under this Agreement or the Warrants or which are otherwise material in the context of the issue of the Warrant and, to the best of the Issuer's knowledge, no such actions, suits or proceedings are threatened or contemplated;
- (i) no stamp or other duty is assessable or payable in, and no withholding or deduction for any taxes, duties, assessments or governmental charges of whatever nature is imposed or made for or on account of any income, registration, transfer or turnover taxes, customs or other duties or taxes of any kind, levied, collected, withheld or assessed by or within, Delaware in connection with the authorisation, execution or delivery of this Agreement or with the authorisation, execution, issue, sale or delivery of the Warrants;
- (j) no event has occurred or circumstance arisen which, had the Warrant been issued, might (or with the giving of notice and/or the lapse of time and/or the fulfilment of any other requirement might) constitute an "Event of Default" as defined in the terms and conditions of the Warrants ;and
- (k) that neither the Issuer, its affiliates nor any persons acting on its behalf has made or will make offers or sales of securities under circumstances that would require the registration of the Warrants under the United States Securities Act of 1933.

##### 5. CONDITIONS PRECEDENT

This Agreement and the obligations of the Company are conditional upon:

- (a) there having been, as at the Closing Date, no adverse change which is material in the context of the issue of the Warrants, in the financial or other condition of the Issuer, nor any breach of, nor any event rendering untrue, misleading or incorrect in any material respect, any of the warranties of the Issuer contained herein, nor any breach by the Issuer of any of its obligations hereunder;
- (b) the Issuer holding, or having the unconditional right to call for the Basket Shares (as defined in the Global Warrant) on the Closing Date.

##### 6. PUT RIGHT

- (a) If at any time prior to the expiry of the Warrants, the Issuer no longer holds, or no longer has the right to call for the Basket Shares, then the Company shall have the right (the "Put Right") to put back to the Issuer all or any Warrants then outstanding which at such time it continues to hold for its own account.
- (b) In the event that the Company exercises the Put Right in accordance with this clause, then it shall deliver to the Issuer the Warrants in respect of which such right is exercised and shall, if appropriate, amend the Global Warrant accordingly.

- (c) In exchange for the delivery of such Warrants to the Issuer, the Issuer shall be liable to pay to the Company an amount per Warrant equal to the Subscription Price plus interest thereon for the period commencing on the Closing Date and ending on the date of delivery by the Company at a rate equal to the rate of interest payable on the Issuer Account, which payment shall be satisfied and discharged by the Company debiting the Issuer Account by the appropriate amount.

#### 7. INDEMNITY

The Issuer agrees to indemnify and hold harmless the Company and its respective directors, officers, employees (each an "Indemnified Person") from and against any and all losses, claims, damages, liabilities, judgments and expenses (including, but not limited to, legal costs and expenses) which it may incur, or which may be made against it caused by or arising out of any breach or alleged breach of any of the representations, warranties, undertakings or agreements contained in, or any certificate issued by the Issuer pursuant to, this Agreement. The amount paid or payable by an Indemnified Person as a result of such losses, claims, damages, liabilities, judgments or expenses shall include any legal or other expense incurred by such Indemnified Person in connection with investigating or defending such claim.

#### 8. TERMINATION

- (1) The Company may by notice given at any time prior to payment of the subscription monies for the Warrants to the Issuer terminate this Agreement if:
  - (a) any of the representations and warranties contained in clause 4 shall have been untrue in any material respect at the time of making thereof or shall subsequently have become untrue in any material respect or in the event of failure to perform any of the Issuer's undertakings or agreements in this Agreement; or
  - (b) on the Closing Date any of the events specified in clause 6(a) have occurred; or
  - (c) in the opinion of the Company, there shall have been since the date hereof, any change, or any development involving a prospective change, in national or international monetary, financial, political or economic conditions or currency exchange rates or foreign exchange controls such as would in the view of the Company be likely to prejudice materially the success of the offering and distribution of the Warrant or dealings in the Warrant in the secondary market.
- (2) Upon such notice being given, the parties hereto shall be released and discharged from their obligations hereunder.

#### 9. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all the counterparts shall constitute one and the same instrument.

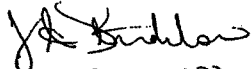
**10. GOVERNING LAW AND JURISDICTION**

- (1) This Agreement is governed by, and shall be construed in accordance with, English law.
- (2) The Issuer hereby agrees for the benefit of the Company that the courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceedings arising out of or in connection with this Agreement may be brought in such courts.

IN WITNESS whereof this Agreement has been entered into on the date hereinbefore stated.

**Cobalt Trading Partners LLC**

By:



J. A. STADDON

DIRECTOR OF MANAGING MEMBER

**EA Investment Services Limited**

By:



**10. GOVERNING LAW AND JURISDICTION**


- (1) This Agreement is governed by, and shall be construed in accordance with, English law.
- (2) The Issuer hereby agrees for the benefit of the Company that the courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceedings arising out of or in connection with this Agreement may be brought in such courts.

IN WITNESS whereof this Agreement has been entered into on the date hereinbefore stated.

**Cobalt Trading Partners LLC**

By:

**EA Investment Services Limited**

  
By: **Tortola Corporation Company Limited**  
**Director**

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THE WARRANTS REPRESENTED BY THIS GLOBAL WARRANT (THE "WARRANTS") HAVE NOT BEEN REGISTERED AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND TRADING IN THE WARRANTS HAS NOT BEEN APPROVED BY THE UNITED STATES COMMODITY FUTURES TRADING COMMISSION (THE "CFTC") UNDER THE UNITED STATES COMMODITY EXCHANGE ACT (THE "COMMODITY EXCHANGE ACT"). THE WARRANTS, OR INTERESTS THEREIN, MAY NOT AT ANY TIME BE OFFERED, SOLD, RESOLD, TRADED OR DELIVERED, DIRECTLY OR INDIRECTLY, IN THE UNITED STATES OF AMERICA (INCLUDING THE STATES AND THE DISTRICT OF COLUMBIA), ITS TERRITORIES, ITS POSSESSIONS AND OTHER AREAS SUBJECT TO ITS JURISDICTION ("UNITED STATES") OR DIRECTLY OR INDIRECTLY OFFERED, SOLD, RESOLD, TRADED OR DELIVERED TO, OR FOR THE ACCOUNT OR BENEFIT OF ANY PERSON ("U.S. PERSON") WHO IS (I) AN INDIVIDUAL WHO IS A CITIZEN OR RESIDENT OF THE UNITED STATES; OR (II) A CORPORATION, PARTNERSHIP OR OTHER ENTITY ORGANISED IN OR UNDER THE LAWS OF THE UNITED STATES OR ANY POLITICAL SUBDIVISION THEREOF OR WHICH HAS ITS PRINCIPAL PLACE OF BUSINESS IN THE UNITED STATES; OR (III) ANY ESTATE OR TRUST WHICH IS SUBJECT TO UNITED STATES FEDERAL INCOME TAXATION REGARDLESS OF THE SOURCE OF ITS INCOME; OR (IV) ANY TRUST IF A COURT WITHIN THE UNITED STATES IS ABLE TO EXERCISE PRIMARY SUPERVISION OVER THE ADMINISTRATION OF THE TRUST AND IF ONE OR MORE UNITED STATES TRUSTEES HAVE THE AUTHORITY TO CONTROL ALL SUBSTANTIAL DECISIONS OF THE TRUST; OR (V) A PENSION PLAN FOR THE EMPLOYEES, OFFICERS OR PRINCIPALS OF A CORPORATION, PARTNERSHIP OR OTHER ENTITY DESCRIBED IN (II) ABOVE; OR (VI) ANY ENTITY ORGANISED PRINCIPALLY FOR PASSIVE INVESTMENT, TEN PER CENT OR MORE OF THE BENEFICIAL INTERESTS IN WHICH ARE HELD BY PERSONS DESCRIBED IN (I) THROUGH (V) ABOVE IF SUCH ENTITY WAS FORMED PRINCIPALLY FOR THE PURPOSE OF INVESTMENT BY SUCH PERSONS IN A COMMODITY POOL THE OPERATOR OF WHICH IS EXEMPT FROM CERTAIN REQUIREMENTS FROM PART 4 OF THE CFTC'S REGULATIONS BY VIRTUE OF ITS PARTICIPANTS BEING NON-U.S. PERSONS; OR (VII) ANY OTHER "U.S. PERSON" AS SUCH TERM MAY BE DEFINED IN REGULATIONS UNDER THE SECURITIES ACT OR IN REGULATIONS ADOPTED UNDER THE COMMODITY EXCHANGE ACT. IN ADDITION IN THE ABSENCE OF RELIEF FROM THE CFTC, OFFERS, SALES, RE-SALES, TRADES OR DELIVERIES OF WARRANTS, OR INTERESTS THEREIN, DIRECTLY OR INDIRECTLY IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF U.S. PERSONS MAY CONSTITUTE A VIOLATION OF UNITED STATES LAW GOVERNING COMMODITIES TRADING. CONSEQUENTLY, ANY OFFER, SALE, RE-SALE, TRADE OR DELIVERY MADE, DIRECTLY OR INDIRECTLY, WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF A U.S. PERSON WILL NOT BE RECOGNISED.

## COBALT TRADING PARTNERS LLC

(the "Issuer")

## GLOBAL CALL WARRANT

In relation to a

Basket of Shares of Companies in the US Technology Sector due 1 November 2006


This global warrant (the "Global Warrant") represents a duly authorised issue of 1000 warrants (the "Warrants" and each one a "Warrant") in relation to a Basket of Shares of Companies in the US Technology Sector due 1 November 2006. The Global Warrant is subject to the attached terms and conditions (the "Conditions").

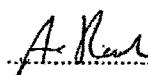
The Global Warrant shall be governed by and construed in accordance with English law.

In witness whereof this Global Warrant has been executed by Cobalt Trading Partners LLC as a deed poll and delivered on the day and year first below written.

Dated 1 November 2001

SIGNED as a deed  
by Cobalt Trading Partners LLC )

  
J. A. STADDON

In the presence of: 

DIRECTOR OF  
MANAGING DIRECTOR

Name: ALAN SHALKE

Address: 1, GLOXT, CUMBERLAND PLAZA  
LONDON W1H 7RZ

## TERMS AND CONDITIONS OF WARRANTS

### 1. Definitions

In these conditions:

**"Announcement Date"** means (i) in respect of a Nationalisation, the date of the first public announcement of a firm intention to nationalise (whether or not amended or on the terms originally announced) that leads to the Nationalisation and (ii) in respect of an Insolvency, the date of the first public announcement of the institution of a proceeding or presentation of a petition or passing of a resolution (or other analogous procedure in any jurisdiction) that leads to the Insolvency, in each case as determined by the Issuer.

**"Basket"** means, with respect to a Warrant, a basket of shares comprising the Basket Shares specified in Schedule A hereto.

**"Basket Share"** means any share that is for the time being comprised in the Basket.

**"Delivery Disruption"** means, in the opinion of the Issuer, the failure of the Issuer to deliver on the Shares Settlement Date the requisite number of Basket Shares that is due solely to illiquidity in the market for such Basket Shares.

**"EAIB"** means European American Investment Bank AG, a financial institution organised under the laws of Austria.

**"Exchange Notice"** means a notice substantially in the form of the Exercise Notice as set out in Schedule B to these Conditions.

**"Exercise Price"** means USD \$89,946 per Warrant, less an amount (if any) equal to the net amount of any dividends payable on the Share Entitlement which are reflected by a change from cum dividend quotation to ex dividend quotation of the Basket Shares on the relevant Share Exchange(s) on any day falling after the Trade Date and on or before the Exercise Date.

**"Exercise Date"** means 1 November 2006.

**"Insolvency"** means that by reason of the voluntary or involuntary liquidation, bankruptcy or insolvency of or any analogous proceeding affecting the issuer of the Basket Shares are required to be transferred to a trustee, liquidator or other similar official, or (if holders of the Basket Shares become legally prohibited from transferring them.

**"Issue Date"** means 1 November 2001.

**"Merger Date"** means, in respect of a Merger Event, the date upon which all holders of the necessary number of Basket Shares to constitute a Merger Event (other than, in the case of a take-over offer, Basket Shares owned or controlled by the offeror) have agreed to or have irrevocably become obliged to transfer their Basket Shares.

**"Merger Event"** means, in respect of the Basket Shares, any (i) reclassification or change of such Basket Shares that results in a transfer of or an irrevocable commitment to transfer all such Basket Shares outstanding; (ii) consolidation, amalgamation or merger of the issuer of the Basket Shares with or into another entity (other than a consolidation, amalgamation or merger in which the issuer of the Basket Shares is the continuing entity and which does not result in any such reclassification or change of all such Basket Shares outstanding); or (iii) other take-over offer for such Basket Shares that result in a transfer of or an irrevocable

commitment to transfer all such Basket Shares (other than such Basket Shares owned or controlled by the offeror), in each case if the Merger Date is on or before the Expiration Date.

**"Merger Event Settlement Amount"** means an amount as determined by the Issuer which shall seek to preserve for the Holder(s) (as defined under Clause 2) the economic equivalent of any payment or delivery (assuming satisfaction of each applicable condition precedent) to which the Holder(s) would have been entitled under the Warrant(s) after the date but for the occurrence of the Merger Event.

**"Nationalisation"** means, with respect to any of the Basket Shares, all the Basket Shares or all the assets or substantially all the assets of the issuer of the Basket Shares are nationalised, expropriated or are otherwise required to be transferred to any governmental agency, authority or entity.

**"Nationalisation/Insolvency Settlement Amount"** means an amount determined by the Issuer which shall seek to preserve for the Holders(s) the economic equivalent of any payment or delivery (assuming satisfaction of each applicable condition precedent) to which the Holder(s) would have been entitled under the Warrant (s) after that date but for the occurrence of the Nationalisation or Insolvency (as the case may be).

**"New Shares"** means shares (whether of the offeror or a third party).

**"Other Consideration"** means cash and/or any securities (other than New Shares) or assets (whether of the offeror or a third party).

**"Potential Adjustment Event"** means, with respect to any of the Basket Shares:

- (a) a subdivision, consolidation or reclassification of the Basket Shares (unless a Merger Event), or a free distribution or dividend of any such Basket Shares to existing holders by way of a bonus, capitalisation or similar issue;
- (b) a distribution or dividend to existing holders of the Basket Shares of (i) such Basket Shares, or (ii) other share capital or securities granting the right to payment of dividends and/or the proceeds of liquidation of the issuer of the Basket Shares equally or proportionately with such payments to holders of such Basket Shares, or (iii) any other type of securities, rights or warrants or other assets, in any case for payment (cash or other) at less than the prevailing market price as determined by the Issuer;
- (c) an extraordinary dividend;
- (d) a call by the issuer of the Basket Shares whether out of profits or capital and whether the consideration for such repurchase is cash, securities or otherwise; or
- (e) any other similar event that may have a diluting or concentrative effect on the theoretical value of the Basket Shares.

**"Settlement Business Day"** means a day (other than Saturday or Sunday) on which each (i) banks in New York and the relevant Settlement System are open for business.

**"Settlement Disruption"** means, in the opinion of the Issuer, any circumstance beyond the control of the Issuer as a result of which the relevant Settlement System cannot clear the transfer of the appropriate number of Basket Shares.

**"Settlement System"** means, with respect to Basket Shares, the system through which such shares are customarily settled or any successor to such respective settlements systems. If the relevant settlement system ceases to settle the Basket Shares, the Issuer will, in its sole discretion, determine another manner of settlement of such Basket Shares.

**"Share Entitlement"** means one Basket per Warrant.

**"Share Exchange"** means, with respect to a Basket Share, NASDAQ, or such other stock exchange as the Issuer shall determine to be the principal stock exchange on which a Basket Share is listed or traded.

**"Share Settlement Date"** means, subject to Condition 6, the fifth Settlement Business Day after the Exercise Date.

**"USD"** means lawful currency of the United States of America.

## **2. Form and Transfer**

The Warrants will at all times be represented by a Global Warrant which will not itself be transferable and which will be deposited with EAIB. Definitive warrants will not be issued.

Notwithstanding any notice to the contrary, the person for the time being appearing in the books of EAIB as the holder of a Warrant shall, for all purposes, be treated by the Issuer and all other persons as the person who is from time to time entitled to exercise the Warrants, being the person who is recorded in the books of EAIB as the holder thereof (the **"Holder"** and, collectively, the **"Holders"**).

All transactions involving the Warrants (including transfers), in the open market or otherwise, must be affected through an account at, and in accordance with any applicable rules and procedures of EAIB. Title to each Warrant will pass upon registration of the transfer in the books of the relevant Clearing System. The minimum trading lot for the Warrants is one Warrant and multiples of one Warrant thereafter.

## **3. Status**

The Warrants (i) constitute unsecured and unsubordinated obligations of the Issuer, (ii) rank equally among themselves and (iii) at the date the Warrants were issued rank equally with all other present and future unsecured and unsubordinated obligations of the Issuer, other than obligations preferred by law. The underlying assets do not constitute obligations of the Issuer and the issue of Warrants shall not result in any rights or obligations arising on the Holder or the Issuer in respect of such underlying assets. Neither the Issuer nor the Holder is obliged (but it may) to purchase, hold or deliver (other than in accordance with these Conditions) any underlying assets.

The Warrants are not secured by any of the Basket Shares or any other securities.

## **4. Exercise Rights**

### **(a) Exercise Rights**

Each Warrant will, when duly exercised in accordance with the terms and conditions set out below, entitle the Holder to purchase from the Issuer the Basket in consideration of the payment of the Exercise Price.

### **(b) Issuer's Obligations**

In no event shall the Issuer have any liability for indirect, incidental or consequential damages (whether or not it has been advised of the possibility of such damages).

The exercise and settlement of the Warrants is subject to all applicable fiscal and other laws, regulations and practices in force on and following the Exercise Date and/or the Share Settlement Date.

The Issuer shall not incur any liability whatsoever if, after using its reasonable efforts, it is unable to effect the transactions contemplated as a result of any such laws, regulations or practices.

(c) Prescription

If an Exercise Notice for a Warrant has not been duly completed and delivered in accordance with the provisions of Condition 5 set out below, by 10:00am (London time) on the Expiration Date, then that Warrant shall become void.

**5. Exercise Procedure**

(a) Exercise Notice

Subject to the exercise by the Issuer of the Issuer Call Right in accordance with Condition 12, or the to prior cancellation by the Issuer in accordance with the provisions of Condition 13, the Warrants may be exercised on the Exercise Date by the Holder delivering a duly completed Exercise Notice to EAIB on or before 12:00am (London time) on such day. Any Exercise Notice delivered after 12:00am on the Exercise Date shall be void and of no effect.

The Exercise Notice shall be in substantially the form set out in Schedule B hereto.

(b) Verification

Upon receiving an Exercise Notice, EAIB, shall verify that the person exercising the Warrants specified in the Exercise Notice is the Holder of those Warrants according to its books. Subject to such verification, EAIB will confirm to the Issuer the number of Warrants being exercised.

If the number of Warrants being exercised specified in the Exercise Notice exceeds the number of Warrants in the warrant account specified in the relevant Exercise Notice, the Exercise Notice will be deemed to be null and void and EAIB, will notify the Issuer accordingly. If the number of Warrants being exercised specified in the Exercise specified in the Exercise Notice does not exceed the number of Warrants in EAIB's account specified in the relevant Exercise Notice, then EAIB, will, on or before the Share Settlement Date, debit the account of the relevant Holder with the Warrants being exercised.

The Issuer will notify Holders as soon as reasonably practicable after it becomes aware of any Exercise Notice being invalid.

(c) Settlement

If a Warrant has been duly exercised in accordance with these conditions then on the Share Settlement Date the relevant Holder shall pay to the Issuer the Exercise Price and the Issuer shall transfer to the relevant Holder the Share Entitlement.

Such payment and such delivery will be made through the appropriate Settlement System at the account or by reference to an identification code notified to the Holders by the Warrant Agent, in the case of the Issuer, and, in the case of the Holders, as set out in the Exercise Notice, on a delivery against payments basis (wherever possible through relevant Settlement System).

(d) Effect of Exercise

Unless the exercise is determined to be improper, (i) the delivery of an Exercise Notice in relation to a Warrant shall constitute an irrevocable election and undertaking by the Holder to exercise that Warrant and (ii) after delivery of the Exercise Notice the relevant Holder may not transfer either legal or beneficial ownership of, or otherwise deal with, the Warrants being exercised. Notwithstanding this, if following the delivery of an Exercise Notice, any Holder does transfer or attempt to transfer the Warrants referred to in the Exercise Notice (the "Exercised Warrants"), then the Holder will be liable to the Issuer for any losses, reasonable costs and expenses suffered or incurred by the Issuer including those suffered as result of the Issuer terminating any related hedging arrangements as a result of receiving the relevant Exercise Notice and subsequently (i) entering into replacement hedging arrangements in respect of the Exercised Warrants or (ii) paying any amount in relation to the Exercised Warrants either with or without having entered into replacement hedging arrangements.

(e) Expenses

A Holder exercising a Warrant shall pay (i) all expenses including, without limitation, all stamp, issue, registration, securities transfer or other similar taxes or duties ("expenses"), if any, payable in connection with the issue and/or exercise of the Warrants, (ii) all expenses involved in delivering the Exercise Notice.

(f) Determinations

Any determination as to whether a Warrant has been properly exercised shall be made by the Issuer and shall be conclusive and binding on the Holder of that Warrant. Any attempt to exercise a Warrant that is determined to be improper shall be null and void and a further attempt will be determined in relation to when the subsequent Exercise Notice is delivered. The Issuer and EAIB will endeavour to notify the Holder of an improperly exercised Warrant of the improper exercise as soon as possible upon becoming aware of such improper exercise. In the absence of negligence or wilful misconduct, the Issuer or EAIB, will not be liable to any person for any action taken or omitted to be taken by it in connection with the notification or determination of an improper exercise. The Issuer will not under any circumstances be liable for any acts or defaults of EAIB in relation to the performance of their duties in relation to the Warrants.

(g) Global Warrant

When a Warrant is exercised, the Issuer will advise EAIB, and EAIB will note the exercise on the Global Warrant and the number of Warrants represented by such Global Warrant shall be reduced by the cancellation of the Warrants exercised.

**6. Settlement Disruption**

If in the opinion of the Issuer there is a Settlement Disruption in relation to the Basket Shares which prevents delivery of such Basket Shares on the original Share Settlement Date, the Share Settlement Date will be the first succeeding day on which there is no Settlement Disruption provided always that, if Settlement Disruption prevents settlement on each of the

10 Settlement Business Days immediately following the original Share Settlement Date, (i) if such Basket Shares can be delivered in any other commercially reasonable manner, then the Share Settlement Date will be the first day on which settlement of a sale of Basket Shares executed on that 10<sup>th</sup> Settlement Business Day customarily would take place using such other commercially reasonable manner of delivery, and (ii) if such Shares cannot be delivered in any other commercially reasonable manner, then the Share Settlement Date will be postponed until delivery can be effected through the relevant Settlement System or in any other commercially reasonable manner.

#### **7. Delivery Disruption**

If in the opinion of the Issuer there is a Delivery Disruption in relation to the Basket Shares and the Issuer has notified the relevant Holder(s) within one Settlement System Business Day following the Exercise Date to that effect, then the Issuer may:

- (a) determine the obligation of the Holder(s) and/or the Issuer to deliver such Basket Shares and the Issuer will pay an amount as it determines shall seek to preserve for the Holder(s) the economic equivalent of the relevant receipt or delivery, as the case may be, (assuming satisfaction of each applicable condition precedent) to which the Holder(s) would have been entitled under the Warrant(s) after that date but for the occurrence of such Delivery Disruption, in which event the entitlements of the respective exercising Holder(s) to deliver or receive (as the case may be) such Basket Shares pursuant to such exercise shall cease and the Issuer's obligations under the Warrant(s) shall be satisfied in full upon payment of such amount; or
- (b) determine that the Issuer shall deliver on the Share Settlement Date such number of Basket Shares as it can deliver on that date and that the Issuer shall pay an amount which it determines shall seek to preserve for the Holder(s) the economic equivalent of the delivery or receipt (as the case may be) of the remainder of the Basket Shares (assuming satisfaction of each applicable condition precedent) to which the Holder(s) would have been entitled under the Warrant(s) after that date but for the occurrence of such Delivery Disruption, in which event the entitlements of the respective exercising Holder(s) to deliver or receive (as the case may be) such Basket Shares pursuant to such exercise shall cease and the Issuer's obligations under the Warrant(s) shall be satisfied in full upon payment of such amount.

#### **8. Adjustment**

The Issuer shall determine whether or not at any time a Potential Adjustment Event has occurred in relation to the Basket Shares and where it determines that such an event has occurred, the Issuer will determine whether such Potential Adjustment Event has a diluting or concentrative effect on the theoretical value of the Basket Shares and, if so, will make such adjustment as it considers appropriate, if any, to the Conditions (including adjusting the Share Exercise Price and/or the Share Entitlement, which the Issuer determines to be appropriate to account for that diluting or concentrative effect and determine the effective date(s) of such adjustment(s).

#### **9. Merger Event**

If, in the opinion of the Issuer, a Merger Event has occurred in relation to the Basket Shares, then the Issuer may:

- (a) make such adjustment as it considers appropriate, if any, to the Conditions (including adjusting the Share Exercise Price and/or the Share Entitlement), to account for such Merger Event and determine the effective date(s) of such adjustment(s); or



able to deposit money, during entirety of that period and (b) the Subscription Price plus 50 per cent of the positive intrinsic value of each Warrant (if any) as at the Call Date.

### 13. Purchase and Cancellation

The Issuer or any of its affiliates may at any time purchase one or more of the Warrants at any price in the open market, by tender, by private treaty or otherwise. If a Warrant is purchased by the Issuer or its affiliate it may be cancelled, held or re-sold or otherwise dealt with. No Warrant that has been exercised or purchased and cancelled may be re-issued.

### 14. Failure to Cover

For so long as the Warrants remain outstanding, the Issuer hereby undertakes:

- (a) to hold as beneficial owner all of the shares comprised in the Basket or otherwise to have enforceable rights to receive on demand delivery of such shares; and
- (b) not to accept, assume or undertake any liability relating to any or all of the shares comprised in the Basket (whether conditional or unconditional, present or future) insofar as any such liability would, if performed, impair or otherwise limit the Issuer's ability to satisfy its obligations with respect to the Warrants

provided that, if either (a) and (b) are at any time not satisfied by the Issuer, then the Issuer shall nevertheless be deemed to be in compliance with this undertaking if it also owns at that time readily realisable assets (which, for these purposes, shall include cash balances and listed securities) having an aggregate value of at least three times the amount that would be required to comply with (a) and (b) above (whether in purchasing additional shares or unwinding any liability).

In the event that the Issuer fails to maintain its undertaking under this Condition, and does not remedy such remission within 10 days of such failure, then the Issuer shall be required to exercise its rights to call the Warrants from each Holder pursuant to Condition 12.

### 15. Taxation

The Issuer is not liable for or otherwise obliged to pay, and the relevant Holder shall pay, any tax, duty, charges, withholding or other payment which may arise as a result of, or in connection with the issue, ownership, transfer, exercise or enforcement of any Warrant, including, without limitation, the delivery of any amount of Basket Shares. The Issuer shall have the right, but not the duty, to withhold or deduct from any amount payable to the Holder, such amount as is necessary (i) for the payment of any such taxes, duties, charges, withholdings or other payments or (ii) for effecting reimbursement in accordance with the following sentence. The relevant Holder shall promptly reimburse the Issuer, if the Issuer is obliged to pay any tax, duty, charge, withholding or other payment referred to in this condition.

### 16. Invalidity and Modification

Should any of the provisions contained in these Conditions be or become invalid, the validity of the remaining provisions shall not be affected in any way. The Issuer will endeavour in good faith to replace the invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid or unenforceable provisions.

The Issuer may modify the Conditions without the consent of the Holders for the purposes of curing any ambiguity or correcting or supplementing any provision contained herein in any manner which the Issuer may deem necessary or desirable provided that such modification is not materially prejudicial to the interests of the Holders. Notice of any such modification will be given to the Holders in accordance with Condition 20, but failure to give, or non-receipt of, such notice will not affect the validity of such modification.

#### **17. Further Issues**

The Issuer may, from time to time without the consent of the Holders, create and issue further Warrants which form a single series with the Warrants.

#### **18. Substitution**

The Issuer may at any time, and from time to time, without the consent of the Holders, substitute for itself as obligor under the Warrants, any subsidiary or holding company of the Issuer or any subsidiary of such holding company which at the time of such substitution has the same credit rating as the Issuer (the "New Issuer"), provided that the New Issuer shall assume all obligations that the Issuer owes to the Holders under or in relation to the Warrants. If such substitution occurs, then any reference in these conditions to the Issuer shall be construed as a reference to the New Issuer. Any substitution will be promptly notified to the Holder in accordance with these conditions. In connection with any exercise by the Issuer of the right of the Substitution, the Issuer shall not be obliged to have regard to any of the consequences suffered by individual Holders as a result of the exercise by the Issuer of the right of substitution, including consequences resulting from the Holders being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of any particular territory. No Holder shall be entitled to claim from the Issuer any indemnification or repayment in respect of any consequence suffered by the Holder as a result of the exercise by the Issuer of the right of substitution.

#### **19. Governing Law**

The Warrants are governed by and construed in accordance with the laws of England. The Issuer hereby irrevocably agrees for the exclusive benefit of each Holder that the courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with the Warrants and that accordingly any suit, action or proceeding (together in this paragraph referred to as "Proceedings") arising out of or in connection with the Warrants may be brought in such courts. Nothing in this paragraph shall limit the right of the bearer of any Warrant to take Proceedings in any other court of competent jurisdiction, whether concurrently or not.

#### **20. Warrant Agent**

The Initial "Warrant Agent" is European American Investment Bank AG and its specified office is its head office at Wallnerstrasse 4, A-1010, Vienna, Austria.

The Issuer reserves the right at any time to vary or terminate the appointment of EAIB and to appoint other or additional Warrant Agents. Notice of any such termination or appointment and of any changes in the specified office of EAIB will be given to the Holders in accordance with these Conditions.

EAIB is acting solely as agent of the Issuer and does not assume any obligation or duty to, or any relationship of agency or trust for or with, any Holder.

**21. Notices**

**(a) To the Issuer**

Notice may be given to the Issuer by delivering the notice in writing to the Issuer at 19 Mount Havelock, Douglas, Isle of Man or such other address as may notified to the Holders in accordance with these Conditions.

**(b) To the Holders**

Any notice to the Holders will be deemed to have been duly given to the Holders if the notice is given to EAIB for onward transmission to the Holders. Any such notice shall be deemed to have been given by the Issuer to the Holders on the date the notice is given to EAIB.

**22. Determinations of the Issuer**

All calculations, determinations or other decisions by the Issuer pursuant to these Conditions (including where a matter is to be decided by reference to the Issuer's opinion) shall (save in the case of manifest error) be made in the Issuer's sole and absolute discretion and shall be final and binding on the Holder. The Issuer shall not have any responsibility for any errors or omissions in the calculation and determination of the any payment due under Conditions 6 to 12 arising from such errors or omissions.

**SCHEDULE A****Share Basket**

<b>Stock Ticker</b>	<b>Company</b>	<b>No of Shares in Baskets</b>
AMAT	Applied Materials Inc	139,200
CSCO	Cisco Systems Inc	325,000
DELL	Dell Computer Corp	295,000
EBAY	EBAY Inc	200,000
FDC	First Data Corp	123,500
IMNX	Immunex Corp	133,100
ORCL	Oracle Corporation	272,300
Q	QWEST Communications	195,000
QCOM	Qualcomm Inc	103,200
XLNX	Xilinx Inc	121,000
	<b>Total</b>	<b>1,907,300</b>

**SCHEDULE B**

**THIS EXERCISE NOTICE SHALL NOT BE EFFECTIVE UNLESS THE APPROPRIATE CERTIFICATION AS TO NON-BENEFICIAL OWNERSHIP HAS ALSO BEEN DELIVERED WHERE REQUIRED**

**Cobalt Trading Partners LLC  
Warrants**

**In relation to**

**a Basket of Shares of Companies in the US Technology Sector due 1 November 2006**

**Exercise Notice for Warrants**

1. Name of the Holder of the Warrants  
(if joint Holders, insert all names)
2. Address of the Holder  
(if joint Holders, insert the address of the first named Holder)
3. Number of Warrants being exercised
4. Warrant Account Details  
  
The Holder irrevocably instructs EAIB to debit its account, on or before the Share Settlement Date, with the Number of Warrants specified in section 3 of this notice.
5. Undertaking  
  
The Holder undertakes to pay all expenses, including, without limitation, any applicable stamp duty and or any other duties or taxes due in connection with the exercise by the Holder of the Warrants and the Holder irrevocably instructs EAIB (i) to debit the account specified in section 4 of this notice with an amount equal to the sum of any such expenses, duties or taxes and (ii) to pay such expenses, duties or taxes.
6. Signature of the Holder  
  
(If joint Holder's, all Holder's must sign)
7. Date of this Notice



— = Redacted by the Permanent  
Subcommittee on Investigations

December 5, 2001

Cobalt Trading Partners LLC

Attn: Chuck Wilk  
Tel: (206) [REDACTED]  
Fax: (206) [REDACTED]

#### TRANSACTION CANCELLATION AGREEMENT

This letter agreement (hereinafter referred to as the "Cancellation Agreement"), dated as of December 5, 2001, is made between HSBC Bank USA ("Party A") and Cobalt Trading Partners LLC ("Party B").

WHEREAS, Party A and Party B entered into the following Transaction:

Party A Reference [REDACTED] with a Trade Date of November 7, 2001, and an Expiration Date of December 31, 2001, as evidenced by a confirmation dated November 7, 2001 (the "Confirmation").

WHEREAS, subject to the terms and provisions hereof, Party A and Party B wish to cancel the Transaction.

NOW, THEREFORE, in consideration of the mutual premises herein, Party A and Party B agreed on December 5, 2001, the following:

1. The Transaction shall be terminated and cancelled with effect from December 10, 2001 (the "Cancellation Date"), and all rights, duties, claims and obligations of Party A and Party B thereunder shall be released and discharged with effect from and including the Cancellation Date without prejudice to any such rights, duties, claims and obligations which arose prior to the Cancellation Date.
2. In consideration of the cancellation of the Transaction as outlined above, Party B agrees to pay the sum of USD 2,795,270.00 to Party A for value December 10, 2001.
3. This Cancellation Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be one and the same instrument.
4. This Cancellation Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without reference to choice of law doctrine and each party hereby submits to the jurisdiction of the Courts of the State of New York.
5. Each of Party A and Party B represents to the other that it has entered into this Cancellation Agreement in reliance upon such tax, accounting, regulatory, legal, and financial advice as it deems necessary and not upon any view expressed by the other.

HSBC Bank USA  
452 Fifth Avenue, New York, NY 10018  
Tel: (212) 525-6347

Ref: [REDACTED]

HSBC Bank USA

— = Redacted by the Permanent  
Subcommittee on Investigations


6. Accounts Details

Payments to Party A:

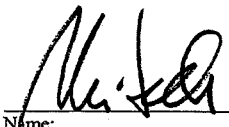
HSBC Bank USA  
ABA # 021-001-088  
For Credit to Department 299  
A/C: [REDACTED]  
HSBC Derivative Products Group

IN WITNESS WHEREOF, each of the parties hereto has caused this Cancellation Agreement to be executed by its officers duly authorized and empowered with effect from the date first written above.

HSBC BANK USA

By:   
Authorized Signature  
[REDACTED]  
VICE PRESIDENT

COBALT TRADING PARTNERS LLC

By:   
Name:  
Title:

By:   
Authorized Signature

MARCELLA VULLO  
VICE PRESIDENT  
[REDACTED]

1643

**7**



A

— = Redacted by the Permanent  
Subcommittee on Investigations

To: 

From: Barnville Limited  
19 Mount Havelock  
Douglas  
Isle of Man

Re: Equity Option Transaction

Dear Sir:

The purpose of this letter (this "Confirmation") is to confirm the terms and conditions of the Equity Option entered into between us on the Trade Date specified below ("the Transaction"). This Confirmation constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

The definitions and provisions contained in the 1996 ISDA Equity Derivatives Definitions (the "Equity Derivatives Definitions"), as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between the Equity Derivatives Definitions and this Confirmation, this Confirmation will govern.

This Confirmation evidences a complete and binding agreement between you and us as to the terms of the Transaction to which this Confirmation relates. In addition, you and we agree to use all reasonable efforts promptly to negotiate, execute and deliver an agreement in the form of the ISDA Master Agreement (Multicurrency-Cross Border) (the "ISDA Form"), with such modifications as you and we will in good faith agree. Upon the execution by you and us of such an agreement, this Confirmation will supplement, form part of, and be subject to that agreement. All provisions contained in or incorporated by reference in that agreement upon its execution will govern this Confirmation except as expressly modified below. Until we execute and deliver that agreement, this Confirmation, together with all other documents referring to the ISDA Form (each a "Confirmation") confirming transactions (each a "Transaction") entered into between us (notwithstanding anything to the contrary in a Confirmation), shall supplement, form a part of, and be subject to, an agreement in the form of the ISDA Form as if we had executed an agreement in such form (but without any Schedule except for the election of English Law as the governing law and US dollars as the Termination Currency) on the Trade Date of the first such Transaction between us. In the event of any inconsistency between the provisions of that agreement and this Confirmation, this Confirmation will prevail for the purpose of this Transaction.

The terms of the Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	28 April 2000
Option Style:	European

— = Redacted by the Permanent  
Subcommittee on Investigations

Option Type:	Call
Seller:	[REDACTED]
Buyer:	Barnville Limited
Basket:	As specified in Annex 1
Number of Options:	One
Option Entitlement:	One Basket per Option
Multiple Exercise:	Inapplicable
Strike Price:	US\$130,165,394
Premium:	The premium for this Option (\$14,945,059) shall be offset and discharged in full against the premium cost for the Put Option entered into between the Buyer and the Seller with the same Trade Date as this Option
Exchange(s):	With respect to each security comprised in the Basket, the exchange on which that security is primarily traded.
Procedure for Exercise:	
Expiration Date:	7 August 2000
Automatic Exercise:	Applicable
Valuation:	
Valuation Time:	With respect to each security comprised in the Basket, the close of trading on the Exchange for that security.
Valuation Date:	The Expiration Date
Settlement Terms:	
Cash Settlement:	Applicable
Cash Settlement Payment Date:	10 August 2000
Adjustments:	

— = Redacted by the Permanent  
Subcommittee on Investigations

Method of Adjustment: Options Exchange Adjustment

Extraordinary Events:

Consequences of Merger Events:

- |     |                     |                             |
|-----|---------------------|-----------------------------|
| (a) | Share-for-Share:    | Options Exchange Adjustment |
| (b) | Share-for-Other:    | Options Exchange Adjustment |
| (c) | Share-for-Combined: | Options Exchange Adjustment |

Nationalisation or Insolvency: Cancellation and Payment

Please confirm that the foregoing correctly sets out the terms of our agreement by executing a copy of this Confirmation enclosed for that purpose and returning it to us.

Yours sincerely,



Barnville Limited

Confirmed as of the date first above written



## ANNEX 1

**Shares comprised in the Basket**

The Basket is composed of the specified Shares of the Issuers listed below in the relative proportions and numbers set out in relation to each Issuer below.

Share	Ticker	Number of Shares in the Basket
Qualcom	QCOM	150,000
Verisign	VRSN	125,000
CMGI	CMGI	150,000
Internet Capital	ICGE	200,000
Broadvision	BVSN	200,000
RealNetworks	RNWK	200,000
Ariba	ARBA	150,000
Yahoo	YHOO	150,000
Citrix	CTXS	200,000
Amazon	AMZN	150,000

<p>— = Redacted by the Permanent Subcommittee on Investigations</p>
---

To: [REDACTED]

From: Barnville Limited  
19 Mount Havelock  
Douglas  
Isle of Man

Re: Equity Option Transaction

Dear Sir:

The purpose of this letter (this "Confirmation") is to confirm the terms and conditions of the Equity Option entered into between us on the Trade Date specified below ("the Transaction"). This Confirmation constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

The definitions and provisions contained in the 1996 ISDA Equity Derivatives Definitions (the "Equity Derivatives Definitions"), as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between the Equity Derivatives Definitions and this Confirmation, this Confirmation will govern.

This Confirmation evidences a complete and binding agreement between you and us as to the terms of the Transaction to which this Confirmation relates. In addition, you and we agree to use all reasonable efforts promptly to negotiate, execute and deliver an agreement in the form of the ISDA Master Agreement (Multicurrency-Cross Border) (the "ISDA Form"), with such modifications as you and we will in good faith agree. Upon the execution by you and us of such an agreement, this Confirmation will supplement, form part of, and be subject to that agreement. All provisions contained in or incorporated by reference in that agreement upon its execution will govern this Confirmation except as expressly modified below. Until we execute and deliver that agreement, this Confirmation, together with all other documents referring to the ISDA Form (each a "Confirmation") confirming transactions (each a "Transaction") entered into between us (notwithstanding anything to the contrary in a Confirmation), shall supplement, form a part of, and be subject to, an agreement in the form of the ISDA Form as if we had executed an agreement in such form (but without any Schedule except for the election of English Law as the governing law and US dollars as the Termination Currency) on the Trade Date of the first such Transaction between us. In the event of any inconsistency between the provisions of that agreement and this Confirmation, this Confirmation will prevail for the purpose of this Transaction.

The terms of the Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	28 April 2000
Option Style:	European

— = Redacted by the Permanent  
Subcommittee on Investigations

Option Type:	Put
Seller:	Barnville Limited
Buyer:	[REDACTED]
Basket:	As specified in Annex 1
Number of Options:	One
Option Entitlement:	One Basket per Option
Multiple Exercise:	Inapplicable
Strike Price:	US\$120,523,513
Premium:	\$17,765,335 provided that, against this amount shall be set-off the premium payable by the Seller to the Buyer for the Call Option entered into between the Buyer and the Seller with the same Trade Date as this Option, resulting in a net premium payment due by the Buyer to the Seller of \$2,820,276
Exchange(s):	With respect to each security comprised in the Basket, the exchange on which that security is primarily traded.
Procedure for Exercise:	
Expiration Date:	7 August 2000
Automatic Exercise:	Applicable
Valuation:	
Valuation Time:	With respect to each security comprised in the Basket, the close of trading on the Exchange for that security.
Valuation Date:	The Expiration Date
Settlement Terms:	
Cash Settlement:	Subject to the Credit Settlement provision below, applicable
Cash Settlement Payment Date:	10 August 2000.

**Credit Settlement:**

In the event that this Option is exercised by the Buyer, and on the Exercise Date an amount (the "Owed Amount") remains owing by the Buyer to the Seller on that date under the Purchase Agreement (but such amount is not then due and payable), then the Cash Settlement Amount (as defined in the Equity Derivatives Definitions) payable on the Cash Settlement Payment Date shall be reduced by the Owed Amount and, in consideration of such reduction and in discharge of all remaining obligations of the Seller under this Option, the Seller shall issue to the Buyer a promissory note for an amount equal to the Owed Amount on terms (including as to interest and repayment ) that match corresponding terms governing the Owed Amount.

For the purposes of the foregoing, the "Purchase Agreement" means the sale and purchase agreement dated the Trade Date and entered into between the Buyer and the Seller.

**Adjustments:**

Method of Adjustment: Options Exchange Adjustment

**Extraordinary Events:****Consequences of Merger Events:**

- |     |                     |                             |
|-----|---------------------|-----------------------------|
| (a) | Share-for-Share:    | Options Exchange Adjustment |
| (b) | Share-for-Other:    | Options Exchange Adjustment |
| (c) | Share-for-Combined: | Options Exchange Adjustment |

Nationalisation or Insolvency: Cancellation and Payment

Please confirm that the foregoing correctly sets out the terms of our agreement by executing a copy of this Confirmation enclosed for that purpose and returning it to us.

Yours sincerely,



Barnville Limited



— = Redacted by the Permanent  
Subcommittee on Investigations

Confirmed as of the date first above written

[REDACTED]

# ANNEX 1

## Shares comprised in the Basket

The Basket is composed of the specified Shares of the Issuers listed below in the relative proportions and numbers set out in relation to each Issuer below.

Share	Ticker	Number of Shares in the Basket
Qualcom	QCOM	150,000
Verisign	VRSN	125,000
CMGI	CMGI	150,000
Internet Capital	ICGE	200,000
Broadvision	BVSN	200,000
RealNetworks	RNWK	200,000
Ariba	ARBA	150,000
Yahoo	YHOO	150,000
Citrix	CTXS	200,000
Amazon	AMZN	150,000

**B**

1654

To: Burgundy Limited  
19 Mount Havelock  
Douglas  
Isle of Man

From: Barnville Limited  
19 Mount Havelock  
Douglas  
Isle of Man

10 May 2000

Re: Equity Option Transaction

Dear Sir:

The purpose of this letter (this "Confirmation") is to confirm the terms and conditions of the Equity Option entered into between us on the Trade Date specified below ("the Transaction"). This Confirmation constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

The definitions and provisions contained in the 1996 ISDA Equity Derivatives Definitions (the "Equity Derivatives Definitions"), as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between the Equity Derivatives Definitions and this Confirmation, this Confirmation will govern.

This Confirmation evidences a complete and binding agreement between you and us as to the terms of the Transaction to which this Confirmation relates. In addition, you and we agree to use all reasonable efforts promptly to negotiate, execute and deliver an agreement in the form of the ISDA Master Agreement (Multicurrency-Cross Border) (the "ISDA Form"), with such modifications as you and we will in good faith agree. Upon the execution by you and us of such an agreement, this Confirmation will supplement, form part of, and be subject to that agreement. All provisions contained in or incorporated by reference in that agreement upon its execution will govern this Confirmation except as expressly modified below. Until we execute and deliver that agreement, this Confirmation, together with all other documents referring to the ISDA Form (each a "Confirmation") confirming transactions (each a "Transaction") entered into between us (notwithstanding anything to the contrary in a Confirmation), shall supplement, form a part of, and be subject to, an agreement in the form of the ISDA Form as if we had executed an agreement in such form (but without any Schedule except for the election of English Law as the governing law and US dollars as the Termination Currency) on the Trade Date of the first such Transaction between us. In the event of any inconsistency between the provisions of that agreement and this Confirmation, this Confirmation will prevail for the purpose of this Transaction.

The terms of the Transaction to which this Confirmation relates are as follows:

**General Terms:**

Trade Date:	10 May 2000
Option Style:	European

1655

Option Type:	Call
Seller:	Burgundy Limited
Buyer:	Barnville Limited
Basket:	As specified in Annex 1
Number of Options:	One
Option Entitlement:	One Basket per Option
Multiple Exercise:	Inapplicable
Strike Price:	US\$132,073,676
Premium:	The premium for this Option (US\$16,241,493) shall be offset and discharged in full against the premium cost for the Put Option entered into between the Buyer and the Seller with the same Trade Date as this Option
Exchange(s):	With respect to each security comprised in the Basket, the exchange on which that security is primarily traded.
<b>Procedure for Exercise:</b>	
Expiration Date:	21 August 2000
Automatic Exercise:	Applicable
<b>Valuation:</b>	
Valuation Time:	With respect to each security comprised in the Basket, the close of trading on the Exchange for that security.
Valuation Date:	The Expiration Date
<b>Settlement Terms:</b>	
Cash Settlement:	Applicable
Cash Settlement Payment Date:	Three Exchange Business Days immediately following the Expiration Date.
<b>Adjustments:</b>	

1656

Method of Adjustment: Options Exchange Adjustment

**Extraordinary Events:**

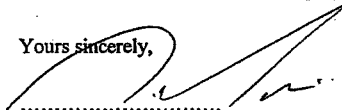
**Consequences of Merger Events:**

- |     |                     |                             |
|-----|---------------------|-----------------------------|
| (a) | Share-for-Share:    | Options Exchange Adjustment |
| (b) | Share-for-Other:    | Options Exchange Adjustment |
| (c) | Share-for-Combined: | Options Exchange Adjustment |

**Nationalisation or Insolvency:** Cancellation and Payment

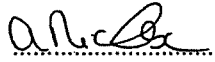
Please confirm that the foregoing correctly sets out the terms of our agreement by executing a copy of this Confirmation enclosed for that purpose and returning it to us.

Yours sincerely,



Barnville Limited

Confirmed as of the date first above written



Burgundy Limited

## ANNEX 1

**Shares comprised in the Basket**

The Basket is composed of the specified Shares of the Issuers listed below in the relative proportions and numbers set out in relation to each Issuer below.

<b>Stock Ticker</b>	<b>Company</b>	<b>No of Shares in Basket</b>	<b>Contribution to Strike Price</b>
VRSN	Verisign, Inc.	100,000	13,748,582
CNXT	Conextent Systems, Inc.	390,000	18,453,661
CMGI	CMGI, Inc.	245,000	15,131,352
ICGE	Internet Capital Group, Inc.	115,000	4,409,248
CMRC	Commerce One, Inc.	300,000	14,883,535
YHOO	Yahoo! Inc.	110,000	14,169,815
CTXS	Citrix Systems, Inc.	400,000	17,704,500
ATHM	Excite @Home	650,000	14,525,383
DCLK	DoubleClick Inc.	330,000	19,047,600
<b>Total</b>			<b>132,073,676</b>

1658

To: Burgundy Limited  
19 Mount Havelock  
Douglas  
Isle of Man

From: Barnville Limited  
19 Mount Havelock  
Douglas  
Isle of Man

10 May 2000

Re: Equity Option Transaction

Dear Sir:

The purpose of this letter (this "Confirmation") is to confirm the terms and conditions of the Equity Option entered into between us on the Trade Date specified below ("the Transaction"). This Confirmation constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

The definitions and provisions contained in the 1996 ISDA Equity Derivatives Definitions (the "Equity Derivatives Definitions"), as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between the Equity Derivatives Definitions and this Confirmation, this Confirmation will govern.

This Confirmation evidences a complete and binding agreement between you and us as to the terms of the Transaction to which this Confirmation relates. In addition, you and we agree to use all reasonable efforts promptly to negotiate, execute and deliver an agreement in the form of the ISDA Master Agreement (Multicurrency-Cross Border) (the "ISDA Form"), with such modifications as you and we will in good faith agree. Upon the execution by you and us of such an agreement, this Confirmation will supplement, form part of, and be subject to that agreement. All provisions contained in or incorporated by reference in that agreement upon its execution will govern this Confirmation except as expressly modified below. Until we execute and deliver that agreement, this Confirmation, together with all other documents referring to the ISDA Form (each a "Confirmation") confirming transactions (each a "Transaction") entered into between us (notwithstanding anything to the contrary in a Confirmation), shall supplement, form a part of, and be subject to, an agreement in the form of the ISDA Form as if we had executed an agreement in such form (but without any Schedule except for the election of English Law as the governing law and US dollars as the Termination Currency) on the Trade Date of the first such Transaction between us. In the event of any inconsistency between the provisions of that agreement and this Confirmation, this Confirmation will prevail for the purpose of this Transaction.

The terms of the Transaction to which this Confirmation relates are as follows:

**General Terms:**

Trade Date:	10 May 2000
Option Style:	European

1659

Option Type:	Put
Seller:	Barnville Limited
Buyer:	Burgundy Limited
Basket:	As specified in Annex 1
Number of Options:	One
Option Entitlement:	One Basket per Option
Multiple Exercise:	Inapplicable
Strike Price:	US\$118,985,294
Premium:	\$19,811,051 provided that, against this amount shall be set-off the premium payable by the Seller to the Buyer for the Call Option entered into between the Buyer and the Seller with the same Trade Date as this Option, resulting in a net premium payment due by the Buyer to the Seller of \$3,569,559.
Exchange(s):	With respect to each security comprised in the Basket, the exchange on which that security is primarily traded.
<b>Procedure for Exercise:</b>	
Expiration Date:	21 August 2000
Automatic Exercise:	Applicable
<b>Valuation:</b>	
Valuation Time:	With respect to each security comprised in the Basket, the close of trading on the Exchange for that security.
Valuation Date:	The Expiration Date
<b>Settlement Terms:</b>	
Cash Settlement Payment Date:	Three Exchange Business Days immediately following the Expiration Date.



**Adjustments:**

Method of Adjustment:	Options Exchange Adjustment
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**Extraordinary Events:****Consequences of Merger Events:**

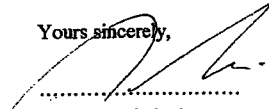
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|-----|---------------------|-----------------------------|
| (a) | Share-for-Share:    | Options Exchange Adjustment |
| (b) | Share-for-Other:    | Options Exchange Adjustment |
| (c) | Share-for-Combined: | Options Exchange Adjustment |

<b>Nationalisation or Insolvency:</b>	Cancellation and Payment
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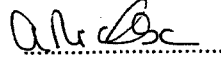
1661

Please confirm that the foregoing correctly sets out the terms of our agreement by executing a copy of this Confirmation enclosed for that purpose and returning it to us.

Yours sincerely,

  
.....  
Barnville Limited

Confirmed as of the date first above written

  
.....  
Burgundy Limited

## ANNEX 1

**Shares comprised in the Basket**

The Basket is composed of the specified Shares of the Issuers listed below in the relative proportions and numbers set out in relation to each Issuer below.

<b>Stock Ticker</b>	<b>Company</b>	<b>No of Shares in Basket</b>	<b>Contribution to Strike Price</b>
VRSN	Verisign, Inc.	100,000	12,386,110
CNXT	Conextent Systems, Inc.	390,000	16,624,920
CMGI	CMGI, Inc.	245,000	13,631,849
ICGE	Internet Capital Group, Inc.	115,000	3,972,296
CMRC	Commerce One, Inc.	300,000	13,408,590
YHOO	Yahoo! Inc.	110,000	12,765,599
CTXS	Citrix Systems, Inc.	400,000	15,950,000
ATHM	AtHome	650,000	13,085,930
DCLK	DoubleClick Inc.	330,000	17,160,000
<b>Total</b>			<b>118,985,294</b>

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Subcommittee on Investigations

HSBC BANK USA  
452 FIFTH AVENUE  
NEW YORK, NEW YORK 10018  
(212) 525-8010

November 30, 2000

Platinum Trading Partners LLC

Attn: [REDACTED]

Dear Sirs:

The purpose of this letter agreement (this "Confirmation") is to confirm the terms and conditions of the Transaction entered into between HSBC Bank USA (the "Bank") and you ("Counterparty") on the Trade Date specified below (the "Transaction"). This Confirmation constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

The definitions and provisions contained in the 1991 ISDA Definitions (the "Swap Definitions") and in the 1996 ISDA Equity Derivatives Definitions (the "Equity Definitions") and, together with the Swap Definitions, the "Definitions", in each case as published by the International Swaps and Derivatives Association, Inc. ("ISDA"), are incorporated into this Confirmation. In the event of any inconsistency between the Swap Definitions and the Equity Definitions, the Equity Definitions will govern. In the event of any inconsistency between either set of Definitions and this Confirmation, this Confirmation will govern.

1. This Confirmation evidences a complete binding agreement between you and us as to the terms of the Transaction to which this Confirmation relates. This Confirmation supplements, forms part of, and is subject to the ISDA Master Agreement, dated as of November 30, 2000, as amended and supplemented from time to time (the "Agreement") between the Bank and the Counterparty.

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in (or refrained from engaging in) substantial financial transactions and has taken other material actions in reliance upon the parties' entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:

**GENERAL TERMS:**

Trade Date:	November 30, 2000
Option Style:	European
Transaction Type:	Share Basket Transaction
Seller:	The Bank

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**Buyer:** Counterparty  
**Basket:** As specified in Annex I  
**Number of Options:** 1  
**Option Entitlement:** 1 Basket per Option  
**Multiple Exercise:** Inapplicable  
**Floor Price:** \$55,798,562.50  
**Cap Price:** \$68,074,246.25  
**Exchange(s):** As specified in Annex I  
**Premium:** \$4,184,892.19  
**Premium Payment Date:** December 4, 2000

**PROCEDURE FOR EXERCISE:**

**Expiration Time:** The official closing time on the Exchange.

**Expiration Date:** March 30, 2001

**Automatic Exercise:** The Option will be deemed to be automatically exercised at the Expiration Time on the Expiration Date; provided, however, that if Counterparty has elected Physical Settlement of this Transaction in accordance with the Special Conditions for Physical Settlement and the Floor Price is greater than the Settlement Price, this Transaction will be settled in accordance with the Physical Settlement provisions set out below without regard to whether or not this Transaction is In-the-Money at the Valuation Time on the Valuation Date.

**Special Conditions for Physical Settlement:** Counterparty may, upon giving irrevocable telephonic notice to the Bank by 5:00 p.m., New York time, no later than the fifth Business Day prior to the Expiration Date, elect Physical Settlement in respect of this Transaction on the terms specified below; provided, however, that no such notice may be delivered on any date on which a Settlement Disruption Event is in existence. For the avoidance of doubt, if no such notice is given or if the Settlement Price exceeds the Cap Price, this Transaction shall be settled in accordance with the Cash Settlement provisions set out below.

**Bank's Telephone  
 Number and Facsimile  
 Number and Contact  
 Details for Purpose  
 of Giving Notice:**

Tel: (212) [REDACTED]  
 Fax: (212) [REDACTED]  
 Contact: Russell Schreiber / Mary Pan  
 HSBC Bank USA  
 452 Fifth Avenue  
 New York, NY 10018

**VALUATION:**

**Valuation Time:** The official closing time on the relevant Exchange.

**Valuation Date:** The Expiration Date.

**SETTLEMENT TERMS:**

**Settlement Method:** Cash Settlement, subject to the Special Conditions for Physical Settlement set out above.

**Relevant Price:** The official closing prices per Share of each Share in the Basket quoted by the Exchange(s) on the Valuation Date or, if any Shares are not quoted on the Exchange(s) on the Valuation Date, the price estimated in good faith by the Calculation Agent (having regard to the number of such Shares being valued for these purposes) as of the Valuation Time on the Valuation Date.

**Cash Settlement:**

**Settlement Price:** An amount equal to the aggregate of (a) the Relevant Price of each Share in the Basket multiplied by (b) the number of each such Shares contained in the Basket.

**Floor Price Differential:** An amount equal to the greater of (a) the excess of the Floor Price over the Settlement Price and (b) zero.

**Cap Price Differential:** An amount equal to the greater of (a) the excess of the Settlement Price over the Cap Price and (b) zero.

**Settlement Currency:** US Dollars ("USD")

**Cash Settlement**

**Payment Date:** Third Currency Business Day after the Valuation Date.

**Cash Settlement Amount:** The Bank shall pay Counterparty an amount, as calculated by the Calculation Agent, equal to the Number of Options multiplied by the Floor Price Differential.

Counterparty shall pay the Bank an amount, as calculated by the Calculation Agent, equal to the Number of Options multiplied by the Cap Price Differential.

**Physical Settlement:** See Special Conditions for Physical Settlement.

**Failure to Deliver:** Not Applicable.

**Physical Settlement Terms:**

The Bank shall pay, or shall cause a third party to pay, Counterparty an amount equal to the Floor Price and Counterparty shall deliver to the Bank, or to a third party designated by the Bank for such purpose, the all of the Shares in the Basket (as specified in Annex I) to be Delivered.

**Settlement Disruption**

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**Event:** Notwithstanding any provision in this Confirmation to the contrary, in the event that Counterparty has elected Physical Settlement of this Transaction in accordance with the Special Conditions for Physical Settlement and a Settlement Disruption Event is in existence on the Valuation Date, this Transaction shall be cash settled in accordance with the Cash Settlement provisions set out above.

**Adjustments:**

Method of Adjustment:	Options Exchange Adjustment
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**Extraordinary Events:**

**Consequences of Merger Events:**

(a) Share-for-Share:	Options Exchange Adjustment
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(b) Share-for-Other:	Cancellation and Payment
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(c) Share-for-Combined:	Cancellation and Payment
-------------------------	--------------------------

Options Exchange:	CBOE
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Nationalization or Insolvency:	Cancellation and Payment
--------------------------------	--------------------------

3. Calculation Agent: The Bank. Whenever the Calculation Agent is required to act, it will do so in good faith, and its determinations and calculations will be binding in the absence of manifest error.

4. Accounts Details:

Account for payments to the Bank: HSBC Bank USA  
ABA #021-004-823

Account for payments to the Counterparty: HSBC Bank USA  
ABA #021-004-823  
Account [REDACTED]

5. Offices:

The Office of the Bank for the Transaction is New York

6. Broken/Arranger: None.

7. Additional Termination Events: (a) The occurrence or existence on any Exchange Business Day or Local Business Day of any event, circumstance or cause beyond the control of the Bank that has or reasonably would be expected to have a material adverse effect on its ability to perform its obligations under this Transaction shall constitute an Additional Termination Event with respect to this Transaction, with both parties as the Affected Parties; (b) the occurrence or existence on any Exchange Business Day or Local Business Day of any event, circumstance or cause beyond the control of the Bank that has the effect of the Bank being unable to buy or sell shares of common stock of any company specified as being part of the Basket shall constitute an Additional Termination Event with respect to this Transaction, with both



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parties as the Affected Parties; and (c) the occurrence of an event of default under any other agreement between the Bank and Counterparty entered into in connection with this Transaction shall constitute an Additional Termination Event with respect to this Transaction, with Counterparty as the sole Affected Party.

8. Counterparty will on demand indemnify the Bank for and against all stamp taxes and any other transfer taxes incurred by the Bank by reason of entering into the Transaction to which this Confirmation relates or settlement thereof in accordance with its terms.

9. Governing law: The laws of the State of New York (without reference to choice of law doctrine).

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to us by facsimile at (212) [REDACTED]

Yours truly,  
HSBC BANK USA

By:

Name: Kevin Corcoran  
Title: Vice President

By:

Name: Byron Kainick  
Title: Assistant Vice President

Confirmed as of the date  
first above written:

PLATINUM TRADING PARTNERS LLC

By:

Name:  
Title:

**Annex I: Shares Comprised in the Basket**

The Basket is composed of the specified Shares of the Issuers listed below in the relative proportions and numbers set out in relation to each Issuer below.

<u>Name</u>	<u>Ticker</u>	<u>CUSIP</u>	<u>Shares</u>	<u>Exchange</u>
AMERICA ONLINE INC.	AOL	02364J104	200,000	NYSE
CLEAR CHANNEL COMMUNICATIONS	CCU	184502102	150,000	NYSE
CONEXANT SYSTEMS INC.	CNXT	207142100	325,000	NASDAQ
3COM CORP.	COMS	885535104	350,000	NASDAQ
DOUBLECLICK INC.	DCLK	258609304	250,000	NASDAQ
DELL COMPUTER CORP.	DELL	247025109	400,000	NASDAQ
JDS UNIPHASE CORP.	JDSU	46612J101	110,000	NASDAQ
INFOSPACE INC.	INSP	45678T102	200,000	NASDAQ
LUCENT TECHNOLOGIES INC.	LU	549463107	350,000	NYSE
QUALCOMM INC.	QCOM	747525103	75,000	NASDAQ

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Date: November 7, 2001

To: Cobalt Trading Partners LLC

From: HSBC Bank USA

Attention: Chuck Wilk

Contact: Byron Rennick

Phone Number: (206) [REDACTED]

Phone Number: (212) [REDACTED]

Facsimile Number: (206) [REDACTED]

Facsimile Number: (212) [REDACTED]

Re: Reference # [REDACTED]

Dear Sirs:

The purpose of this letter agreement (this "Confirmation") is to confirm the terms and conditions Transaction entered into between HSBC Bank USA (the "Bank") and Cobalt Trading Partners LLC ("Counterparty") on the Trade Date specified below (the "Transaction"). This Confirmation constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

The definitions and provisions contained in the 1991 ISDA Definitions (the "Swap Definitions") and in the 1996 ISDA Equity Derivatives Definitions (the "Equity Definitions" and, together with the Swap Definitions, the "Definitions"), in each case as published by the International Swaps and Derivatives Association, Inc. ("ISDA"), are incorporated into this Confirmation. In the event of any inconsistency between the Swap Definitions and the Equity Definitions, the Equity Definitions will govern. In the event of any inconsistency between either set of Definitions and this Confirmation, this Confirmation will govern.

1. This Confirmation evidences a complete binding agreement between the Bank and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation supplements, forms part of, and is subject to the ISDA Master Agreement, dated as of November 5, 2001, as amended and supplemented from time to time (the "Agreement"), between the Bank and the Counterparty.

2. The terms of the Transaction to which this Confirmation relates is as follows:

**GENERAL TERMS:**

Trade Date:	November 7, 2001
Option Style:	European
Transaction Type:	Share Basket Collar Transaction, which is comprised of a Call and a Put
Buyer of Call, Seller of Put:	The Bank
Seller of Call, Buyer of Put:	Counterparty

Ref: [REDACTED]

HSBC Bank USA

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**Basket:** A basket of shares composed of the shares (each, respectively, a "Share") of each company (each, respectively, an "Issuer") specified in Annex I attached hereto and the quantity indicated therein

**Number of Options:** 1

**Option Entitlement:** 1 Basket per Option

**Multiple Exercise:** Inapplicable

**Initial Price:** \$59,964,098.38

**Strike Price of Put (Floor Price):** \$59,964,098.38

**Strike Price of Call (Cap Price):** \$65,960,508.22

**Premium:** \$2,440,538.80

**Premium Payer:** Counterparty

**Premium Payment Date:** November 8, 2001. Counterparty hereby authorizes the Bank, on the Premium Payment Date, to debit from Counterparty's account maintained with the Bank (account number 8861) an amount equal to the Premium.

**Exchange(s):** For each Share comprised in the Basket, as specified for such Share in Annex I

**Related Exchange(s):** Any exchange on which options or futures on the Shares are traded.

**Clearance System:** The relevant Clearance System for the Shares

## PROCEDURE FOR EXERCISE:

**Expiration Time:** 4 p.m. local time in New York City

**Expiration Date:** December 31, 2001

**Automatic Exercise:** Applicable.

**Bank's Telephone  
Number and Facsimile  
Number and Contact  
Details for Purpose  
of Giving Notice:**

**Tel:** (212) [REDACTED]  
**Fax:** (212) [REDACTED]  
**Contact:** Russell Schreiber / Mary Pan  
HSBC Bank USA  
452 Fifth Avenue  
New York, NY 10018

**Reference Price:** The sum of the values for the Shares of each Issuer comprised in the Basket, in each case calculated as the product of (i) the Share Price of

Ref: [REDACTED]

HSBC Bank USA

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one such Share and (ii) the relevant Number of Shares comprised in the Basket on the Expiration Date.

"Share Price" means for those Shares listed on the Nasdaq NMS, the last traded price per Share quoted by the Exchange at the Expiration Time on the Expiration Date, without regard to extended or after hours trading.

"Share Price" means for those Shares listed on the New York Stock Exchange, the closing price per Share quoted by the Exchange at the Expiration Time on the Expiration Date, without regard to extended or after hours trading.

## SETTLEMENT TERMS:

Physical Settlement:	Applicable
Failure to Deliver:	Applicable

## ADJUSTMENTS AND EXTRAORDINARY EVENTS:

## Adjustments:

Method of Adjustment:	Calculation Agent Adjustment
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## Extraordinary Events:

## Consequences of Merger Events:

(a) Share-for-Share:	Alternative Obligation or Cancellation and Payment, at the Bank's discretion, and the Bank shall notify Counterparty of its election no later than two (2) Business Days prior to the Merger Date.
(b) Share-for-Other:	Cancellation and Payment
(c) Share-for-Combined:	Cancellation and Payment with respect to the Other Consideration, and with respect to the New Shares, Alternative Obligation or Cancellation and Payment, at the Bank's discretion, and the Bank shall notify Counterparty of its election no later than two (2) Business Days prior to the Merger Date.

## Alternative Obligation:

The applicable definition of "Alternative Obligation" in subsections 9.3(b), (c) and (d) of the Equity Definitions shall be amended by adding the following at the end of each such subsection:

"including any one or more of the Strike Price of the Call, Strike Price of the Put, Number of Options, Number of Shares in the Basket, Option Entitlement, Relevant Price, Averaging Dates, Reference Price, and any other variable relevant to the exercise, settlement or payment terms of each such Transaction. Notwithstanding the above, the Calculation Agent will determine if any such Merger Event adjustment affects the theoretical value of any such Transaction, and if so, may in its reasonable discretion make an adjustment to any one or more of the, Strike Price of the Call, Strike Price of the Put, Number of Options,

Ref: [REDACTED]

HSBC Bank USA

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Number of Shares in the Basket, Option Entitlement, Relevant Price, Averaging Dates, Reference Price, and any other variable relevant to the exercise, settlement or payment terms of such Transaction to reflect the characteristics (including, without limitation, the volatility, dividend practice and policy and liquidity) of the New Shares and/or the Other Consideration. Any adjustment made pursuant to this paragraph will be effective as of the date determined by the Calculation Agent.

**Nationalization or  
Insolvency:**

**Cancellation and Payment**

**Definitions:**

The definition of "Merger Event" in Section 9.2(a) of the Equity Definitions shall be deleted in its entirety and replaced with the following:

"Merger Event" means any (i) reclassification or change of the Shares that results in a transfer of, or an irrevocable commitment to transfer 10% or more of all outstanding Shares, (ii) consolidation, amalgamation or merger of the Issuer with or into another entity (other than a consolidation, amalgamation or merger in which the Issuer is the continuing entity and which does not result in any such reclassification or change of 10% or more of all outstanding Shares) or (iii) other takeover offer for the Shares that results in a transfer of or an irrevocable commitment to transfer 10% or more of all the outstanding Shares (other than the Shares owned or controlled by the offer or), in each case if the Merger Date is on or before, in the case of a Physically-settled Option Transaction, the final Expiration Date or, in any other case, the final Valuation Date.

3. **Calculation Agent:**

The Bank will be the Calculation Agent. Whenever the Calculation Agent is required to act, it will do so in good faith, and its determinations and calculations will be binding in the absence of manifest error.

4. **Accounts Details:**

Account for payments to the Bank: HSBC Bank USA,  
ABA #021-004-823

Account for payments to the Counterparty: HSBC Bank USA,  
ABA #021-004-823,  
Account # [REDACTED]

5. **Offices:**

The Office of the Bank for the Transaction is New York

6. **Broker/Arranger: None.**

7. **Additional Termination Events**

Each of the following shall constitute an Additional Termination Event with respect to this Transaction in respect of which both parties shall be Affected Parties:

Ref: [REDACTED]

HSBC Bank USA

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 Subcommittee on Investigations

- (a) The occurrence or existence on any Exchange Business Day or Local Business Day of any event, circumstance or cause beyond the control of the Bank that has or reasonably would be expected to have a material adverse effect on its ability to perform its obligations under this Transaction; and
- (b) The occurrence or existence on any Exchange Business Day or Local Business Day of an event beyond the control of the Bank that has the effect of making it impossible or illegal for the Bank to maintain its hedge in connection with this Transaction (including without limitation the ability to freely trade (long or short) the Shares on the Exchange or to borrow the Shares on reasonable terms).

#### 8. Unwind Events.

The following shall constitute an Unwind Event:

Counterparty shall notify the Bank that an Unwind Event has occurred.

Upon the occurrence of an Unwind Event, the Transaction shall terminate immediately (the "Unwind Date") and the Unwind Date shall become the Expiration Date.

The amount payable upon the termination of this Transaction following the occurrence of an Unwind Event shall be determined by the Calculation Agent using the standard Black-Scholes option pricing formula where:

- The Put Option will be valued at 50.25% volatility.
- The Call Option will be valued at 50.50% volatility.
- The Risk Free rate will be determined by using the inter-bank offer deposit rate at the date of the Unwind Event.
- Dividend will be zero.
- For the unwind of the Transaction, the value of the Basket shall be calculated using the stock prices per Share at which the Bank repurchases the stock to close hedge from the Counterparty or in the open market on the exchange on which such stock is traded.

#### 9. Taxes.

Counterparty will on demand indemnify the Bank for and against all stamp taxes and any other transfer taxes incurred by the Bank by reason of entering into the Transaction to which this Confirmation relates or settlement thereof in accordance with its terms.

#### 10. Acknowledgment and Additional Representations.

Each party hereby acknowledges and agrees that the other party has engaged in (or has refrained from engaging in) substantial financial Transaction and has taken other material actions in reliance upon the parties' entry into the Transaction to which this Confirmation relates on the terms and conditions set forth herein.

In addition to the representations set forth in the Agreement, Counterparty further represents that:

- (a) Neither the Bank nor any of its affiliates has advised Counterparty with respect to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction, and neither the Bank nor any of its affiliates is acting as agent, or advisor for Counterparty in connection with the Transaction.
- (b) Counterparty further represents that it is not an "affiliate" of the Issuer, as such term is defined in Regulation 230.144(a)(1) under the Securities Act of 1933 (the "1933 Act"), nor is it a counterparty entering into the Transaction on behalf of the Issuer or any affiliate thereof.
- (c) Counterparty represents that it is not in possession of any material non-public information concerning the business, operations or prospects of the Issuer and was not in possession of any such information at the time of placing any order with respect to the Transaction.

Ref: [REDACTED]



HSBC Bank USA

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Subcommittee on Investigations

In addition to the representations set forth in the Agreement, Counterparty further represents that:

(a) Neither the Bank nor any of its affiliates has advised Counterparty with respect to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction, and neither the Bank nor any of its affiliates is acting as agent, or advisor for Counterparty in connection with the Transaction.

(b) Counterparty further represents that it is not an "affiliate" of the Issuer, as such term is defined in Regulation 230.144(a)(1) under the Securities Act of 1933 (the "1933 Act"), nor is it a counterparty entering into the Transaction on behalf of the Issuer or any affiliate thereof.

(c) Counterparty represents that it is not in possession of any material non-public information concerning the business, operations or prospects of the Issuer and was not in possession of any such information at the time of placing any order with respect to the Transaction.

"Material" information for these purposes is any information to which an investor would reasonably attach importance in reaching a decision to buy, sell or hold any securities of the Issuer(s).

(d) Counterparty represents to the Bank (at all times until termination of the Transaction) that the Transaction is, and at all times will be, in full compliance with Counterparty's organizational and governing documents and investment policies and guidelines.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to us by facsimile at (212) [REDACTED]

Yours truly,  
HSBC BANK USA

By: [REDACTED]

Name: BYRON RENNICK  
Title: ASSISTANT VICE PRESIDENT

By: [REDACTED]

Name: SUSAN LUCAL  
Title: ASSISTANT VICE PRESIDENT

Confirmed as of the date  
first above written [REDACTED]

COBALT TRADING PARTNERS LLC

Name: [REDACTED]  
Title: [REDACTED]

By: \_\_\_\_\_

Name:  
Title:

Ref: [REDACTED]

HSBC Bank USA

— = Redacted by the Permanent  
Subcommittee on Investigations

In addition to the representations set forth in the Agreement, Counterparty further represents that:

(a) Neither the Bank nor any of its affiliates has advised Counterparty with respect to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction, and neither the Bank nor any of its affiliates is acting as agent, or advisor for Counterparty in connection with the Transaction.

(b) Counterparty further represents that it is not an "affiliate" of the Issuer, as such term is defined in Regulation 230.144(c)(1) under the Securities Act of 1933 (the "1933 Act"), nor is it a counterparty entering into the Transaction on behalf of the Issuer or any affiliate thereof.

(c) Counterparty represents that it is not in possession of any material non-public information concerning the business, operations or prospects of the Issuer and was not in possession of any such information at the time of placing any order with respect to the Transaction.

"Material" information for these purposes is any information to which an investor would reasonably attach importance in reaching a decision to buy, sell or hold any securities of the Issuer(s).

(d) Counterparty represents to the Bank (at all times until termination of the Transaction) that the Transaction is, and at all times will be, in full compliance with Counterparty's organizational and governing documents and investment policies and guidelines.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to us by facsimile at (212) [REDACTED]

Yours truly,  
HSBC BANK USA

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Confirmed as of the date  
first above written:

COBALT TRADING PARTNERS LLC

By: [REDACTED]  
Name: [REDACTED]  
Title: [REDACTED]

By: \_\_\_\_\_  
Name:  
Title:

Ref: [REDACTED]

HSBC Bank USA

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**Annex I:****Shares Comprised in the Basket**

The Basket is composed of the specified Shares of the Issuers listed below in the relative proportions and numbers set out in relation to each Issuer below.

Issuer	Ticker Symbol	Price per Share	Number of Shares in Basket	Exchange
Applied Materials Inc.	AMAT	USD 39.9061	139,200	Nasdaq NMS
Cisco Systems Inc.	CSCO	USD 19.1075	325,000	Nasdaq NMS
Dell Computer Corp.	DELL	USD 26.3146	295,000	Nasdaq NMS
eBay Inc.	EBAY	USD 56.9940	200,000	Nasdaq NMS
First Data Corp.	FDC	USD 71.5045	123,500	New York Stock Exchange
Immunex Corp.	IMNX	USD 25.6466	133,100	Nasdaq NMS
Oracle Corporation	ORCL	USD 15.5597	272,300	Nasdaq NMS
Qwest Communications International Inc.	Q	USD 11.5000	195,000	New York Stock Exchange
QUALCOMM Inc.	QCOM	USD 55.1282	103,200	Nasdaq NMS
Xilinx, Inc.	XLNX	USD 38.2200	121,000	Nasdaq NMS

RESPONSES TO SUPPLEMENTAL QUESTION FOR THE RECORD  
SUBMITTED BY

SENATOR NORM COLEMAN

and

SENATOR CARL LEVIN

to

LOUIS J. SCHAUFEELE III

Securities Broker/Former Wyly Banker at Bank of America

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

HEARING ON

*TAX HAVEN ABUSES:*

*THE ENABLERS, THE TOOLS & SECRECY*

August 1, 2006

1. Exhibit 25 is attached to this set of questions. It consists of e-mails between Keeley Hennington, Chief Financial Officer of the Wyly family office, you, and Michelle Boucher, CFO of Irish Trust and protector of Wyly related offshore trusts. On October 3, 2001, at 1:59 p.m., Ms. Hennington reported to Ms. Boucher that Mr. Charles Wyly wanted to sell 100,000 shares of Michaels stock through Lehman Brothers. She wrote:

“They were ok with my verbal and just needed you to follow up and get some instruction from the trustees also. They were selling today on my verbal authorization. I really hope that is okay.”

At 4 p.m. that same day, you reported to Ms. Boucher that 82,000 shares of Michaels stock had been sold for Quayle Ltd., an Isle of Man corporation owned by one of the Wyly related trusts.

- a. Were the 82,000 shares you referenced in your e-mail to Ms. Boucher sold on the verbal authorization of Ms. Hennington?
- b. Did the trustees or any individual authorized to act on behalf of Quayle Ltd. provide authorization for the sale of the stock before the stock was sold?
  - i. If yes, who provided the authorization, how was that authorization conveyed, and when was it conveyed?
  - ii. If not, why were shares of the stock owned by Quayle Ltd. sold on the authorization of Ms. Hennington, who worked for the Wyly family office, and was not authorized to initiate transactions for Quayle?

Permanent Subcommittee on Investigations

EXHIBIT #65e

2. When you moved to Bank of America, did Mr. Sam Wyly and/or Mr. Charles Wyly make, or have any role in, the decision to move the offshore accounts from Lehman Brothers to Bank of America?
  
3. Exhibit 21q is attached to this set of questions. It consists of an e-mail originally sent by Mr. Phil Wertz, at Bank of America, and then forwarded by you to Mr. Charles Pulman, at Meadows Owens, on May 26, 2004.
  - a. Did you understand that Bank of America's corporate policy required that beneficial ownership information be provided to Bank of America?
  - b. Why did you seek an outside opinion from Charles Pulman on this matter?
  - c. Who did Mr. Pulman work for and who did he represent on this matter?
  
4. Did you represent to your employers – CSFB, Lehman Brothers, and Bank of America – that the offshore trusts and the offshore corporations owned by the trusts were independent of Mr. Sam Wyly and Mr. Charles Wyly?

If so, who represented to you that the offshore trusts and offshore corporations were independent?
  
5. Exhibit 21h and Exhibit 21w are attached to this question. Exhibit 21h consists of a series of e-mails. A March 25, 2004, e-mail from Ms. Lori Bensing, Bank of America Private Bank Sales Manager, which is copied to you, includes the following:

“In short NFS [National Financial Services] thinks that there might be Patriot Act issues and that the stock might be affiliated in some way.”

Exhibit 21w is an e-mail exchange between you and Mr. Phil White, Bank of America Private Bank Market Executive. On October 15, 2004, you write:

“It seems that 144 and affiliation is a question along with AML issues.”

  - a. When was the first time you realized that NFS concerns about the ownership of the Wyly related offshore accounts extended beyond AML related matters and also included affiliate related matters?

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-3-

- b. Did you communicate this particular concern (affiliate status) to the representatives of the offshore trusts and corporations? If so, to whom did you communicate this? When did you communicate this and what was the response?**
- c. Did you ever report to anyone at Bank of America that the affiliate issue had arisen at Lehman brothers in conjunction with a proposed pre-paid forward sale of Michaels stock by Devotion Ltd., one of the offshore corporations owned by a Wyly related Isle of Man trust?**

**[RESPONSES ATTACHED]**

#

1682

Martin J. Auerbach, Esq.  
1345 Avenue of the Americas, 19<sup>th</sup> Floor  
New York, NY 10105

Telephone 212 903 9180

Facsimile 212 903 9185

September 7, 2006

**VIA FEDEX**

Hon. Norm Coleman  
Chairman

Hon. Carl Levin  
Ranking Minority Member

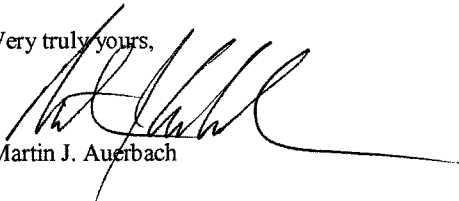
Permanent Subcommittee on Investigations  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
199 Russell Senate Office Building  
Washington, DC 20510

Re: Supplemental Questions for the Record

Dear Senators Coleman and Levin:

As counsel to Louis J. Schauffele III, I am enclosing his answers to the Supplemental Questions for the Record that you submitted to him in connection with the Subcommittee's August 1, 2006 hearing. Mr. Schauffele understands that these questions are an extension of the hearing and that he therefore remains under oath in answering them.

Very truly yours,

  
Martin J. Auerbach

Encl.

cc: Louis J. Schauffele III

ANSWERS OF LOUIS J. SCHAUFEL, III to SUPPLEMENTAL QUESTIONS  
FOR THE RECORD

1. a. Although I do not specifically recall this transaction, it is my best recollection that the sale of 82,000 shares of Michaels stock was based on my understanding that we would receive instructions from the trustees of the offshore trusts directing this sale, which, to the best of my knowledge, we had always received on each transaction for the offshore accounts. Although I do not recall this particular transaction, it is possible, based on my understanding of the consistent practice described above, and my understanding that it would be followed in this instance, that a trade was placed before the receipt of those instructions from the offshore trustees. It is further my belief that such instruction was received with respect to this trade and would have fully ratified its execution. If the trustees had not approved this transaction, the trade would have been broken.

b. i. I have no specific recollection of this transaction. Without access to the records I cannot say with certainty whether authorization was received from the trustees or any individual authorized to act on behalf of Quayle Ltd. before this sale of Michaels shares, and if so, from whom and in what form. It is possible, as appears to be the implication of the e-mails attached as Exhibit 25, that prior authorization of this particular transaction was not received. If this transaction had not been approved by the trustees, this trade would have been broken.

ii. As noted in response to question 1.a., I would not have viewed the sale as being made "on the authorization of Ms. Hennington." Rather, I would have expected actual approval of the sale to be made by the trustees, as they always had and, I believe, did in this instance. If the trustees had not approved this transaction, the trade would have been broken.

2. Sam Wyly and Charles Wyly played no role in my decision to move from Lehman Brothers to Bank of America. My team and I decided to move to Bank of America because it presented us with an attractive employment opportunity. At no time before our move, did the Wyls, or anyone acting on behalf of them or the offshore accounts, express any desire either to remain at Lehman Brothers or move their accounts to Bank of America. When we moved, most of our clients simply moved with us. Thus, from my perspective and to the best of my knowledge, Sam Wyly and Charles Wyly played no role in the decision to move the offshore accounts from Lehman Brothers to Bank of America.

In addition, I would note while the Committee's August 1, 2006 Report appears to imply that these accounts were no longer welcome at Lehman Brothers and were "promptly" moved after discussion of the Devotion collar ended in late September or early October 2001, in fact, my understanding is that: (1) far from objecting to these accounts or wanting them to leave, Lehman Brothers actively sought to have the Wyly-related offshore accounts remain at Lehman Brothers even after I moved to Bank of America, and (2) the move did not occur until late January or early February 2002, some four to five months after those Devotion discussions ended, hardly "promptly" in the investment securities business.



3. a. When the Wyly-related offshore accounts were opened at Bank of America in the first quarter of 2002, I requested direction from the Bank compliance department about the information the Bank needed from the offshore entities to open the accounts. That information – which we were told to obtain and did obtain – did not include beneficial ownership information. The question of beneficial ownership was not raised until NFS did so in the latter part of 2003. In addition, I believe that my understanding of Bank of America's policy is consistent with the testimony of Michael Conn (see August 1 hearing transcript at 138 -139: "The bank's policies at the time...did not always require that beneficial ownership information be obtained at account opening") and the manner in which the Wyly-related offshore accounts were treated by the Bank (including its legal and compliance departments, and all of the management senior to me who oversaw the handling of these accounts) in the lengthy period before the written demand for that information.

b. While I did ask Charles Pulman for "any comments you might have," I did not seek an outside legal opinion from him. As an employee of Bank of America, the legal advice I followed was that of the Bank's lawyers. As I have told the Staff, I put Mr. Pulman and the Bank's counsel in touch with one another so they could have a fully informed legal discussion with one another about legal issues. I am not a lawyer and thought that it would be best for the Bank's counsel to be talking directly to the lawyer for the offshore entities.

c. It was my understanding that Mr. Pulman worked for Meadows, Owens and was representing the Wyly-related offshore entities. That understanding was based on a discussion with Michelle Boucher, who was a trust Protector. Ms. Boucher identified Mr. Pulman as the attorney for the offshore entities when I suggested that their counsel should talk with counsel for Bank of America about the question of beneficial ownership.

4. All of my employers—CSFB, Lehman Brothers, and Bank of America—were actively aware that the offshore accounts were Wyly-related. I do not recall what discussion, if any, took place while I was at CSFB with respect to issue of whether the offshore trusts and the offshore corporations owned by the trusts were "independent" of Sam Wyly and Charles Wyly. The Wyls' relationship to the offshore accounts was always well known to CSFB, and CSFB had an active legal and compliance staff who were in a position to determine the accounts' affiliation status.

The Lehman Brothers legal department actively addressed the issue of independence and received representations from Wyly representatives and Michaels Stores legal representatives, rather than from me, that the offshore trusts and the offshore corporations owned by the trusts were independent of Sam and Charles Wyly. Lehman Brothers' treatment of the accounts, with respect to options exercises, trading, and margin, were all consistent with a legal conclusion on the part of Lehman Brothers that the accounts were independent of Sam and Charles Wyly.

While I was at Bank of America, the question of whether the offshore accounts were independent of Sam and Charles Wyly was carefully reviewed by members of the Bank's legal and compliance departments, as well as senior management. Based on the manner in which the legal and compliance departments permitted those accounts to transact business, it is my understanding that they viewed

those accounts as independent. Among other things, that was consistent with both the position that had been repeatedly taken by the Wyls and counsel to Michaels Stores and with the un-legended and unrestricted nature of the Michaels Stores shares provided to those accounts by the transfer agent for Michaels Stores. To the extent Bank of America sought my understanding with respect to the issue of independence, I freely and honestly provided my understanding that they were independent, based on what had been repeatedly and consistently represented to me by the Wyls, their representatives, the representatives of the offshore trusts and corporations, and the lawyers for Michaels Stores.

With respect to the question of independence, there are two other issues I would note. First, the Committee's August 1, 2006 Report says that I knew that the Wyls were "exercising direction" over the offshore accounts. That is not my understanding. While it is certainly true that, as I told the Committee's Staff, I discussed various investment ideas with the Wyls and their on-shore advisors, it was not my understanding that the Wyls were "exercising direction" over the offshore accounts. To the contrary, as I told the Staff, it was my understanding that whatever views the Wyls had about the offshore accounts, the accounts were being "directed" by the trustees, not by the Wyls. The language in the Report may be a matter of semantics, but it is important to me that the record be clear that it was not my understanding that the Wyls were "exercising direction" as I understand that phrase.

Second, the Committee's August 1, 2006 Report might be read to imply that I had somehow neglected to alert CSFB, Lehman Brothers, or Bank of America to 13D issues with respect to the offshore accounts. To the extent that is the Report's implication, I respectfully disagree. First, as I discussed with the Staff, for a portion of the time the offshore accounts were at Lehman Brothers, a number of those accounts were 13D filers, so there was nothing about which I needed to alert Lehman Brothers. Second, the facts that these accounts are related to the Wyls and that they are related to Michaels Stores – the facts that would give rise to affiliation and 13D questions – were always fully known to CSFB, Lehman Brothers, and Bank of America. Thus, the potential 13D implications of these accounts is something that was always well known to all of these institutions and not something about which I failed to alert them.

5. a. and b. I do not recall specifically when I became aware that NFS concerns about the offshore accounts might include affiliate-related matters. I do recall, however, as I previously told the Staff, the context in which the question of affiliation arose. NFS questioned the possibility of affiliation between the accounts when shares held in one offshore account were transferred to another of the offshore accounts, which, in turn, transferred funds to the first account. NFS indicated that this appeared to suggest that the accounts were not independent of one another, and NFS was focused on that rather than affiliation between the accounts and Michaels Stores. We communicated NFS's concern about the relationship among the accounts to Michelle Boucher, as Protector for the offshore trusts, and asked her to provide an explanation of the inter-account activity being questioned by NFS. The explanation for the transaction that we were provided and then shared with NFS was that the first account had shares when its beneficiaries wanted cash while the other account had cash and was interested in holding shares. Rather than having to go to the market to sell those

shares and receive cash, the trades were simply linked providing the first account with funds and the second account with stock.

c. Although I do not recall specifically reporting to people at Bank of America that "the affiliate issue" had arisen at Lehman Brothers in conjunction with the proposed pre-paid forward sale of Michaels stock by Devotion Ltd., the affiliation issue is certainly one that was known at Bank of America. As reflected in the Barry Harris e-mail of March 25, 2004, 6:21 PM, to Lori Bensing and Mike Hearn that is included in Exhibit 21h, affiliation was not an issue that I understood to be unfamiliar or controversial. As Mr. Harris (who was a senior legal officer for Bank of America's Private Bank) noted, "I would assume that a letter from the corp GC [of Michaels Stores] wou[ld] satisfy NFS that the stock is neither controlled nor restricted." Finally, I would note that although there was lengthy discussion with NFS and within Bank of America, involving legal, compliance, and senior management, no one ever suggested that there would be any difficulty in obtaining such a letter nor did Michaels Stores ever decline to provide one. Indeed, at the time of that discussion, I am not aware that the Bank or NFS ever sought such a letter or any other assurance on this issue, nor was I directed to seek one.

From: Harris, Barry [barry.harris@bankofamerica.com]  
 Sent: Friday, March 26, 2004 10:56 AM  
 To: Schaufele, Louis J.; Bensing, Lori S.; Hearn, Mike  
 Cc: Hechtlinger, Susan; Bowden, Theodore I.  
 Subject: Re: need some offshore help

-----  
 Sent from my BlackBerry Wireless Handheld

-----Original Message-----  
 From: Harris, Barry P. <Barry.Harris@BankofAmerica.com>  
 To: Schaufele, Louis J. <louis.j.schaufele@bankofamerica.com>; Bensing, Lori S. <lori.s.bensing@bankofamerica.com>; Hearn, Mike <Mike.Hearn@BankofAmerica.com>  
 Sent: Fri Mar 26 10:54:57 2004  
 Subject: Re: need some offshore help

Unfortunately no. Need names and/or other identifiers to run them through the background checks as I understand our and NFS' processes. But Susan H and Ted may have other thoughts.

Barry  
 -----  
 Sent from my BlackBerry Wireless Handheld

-----Original Message-----  
 From: Schaufele, Louis J. <louis.j.schaufele@bankofamerica.com>  
 To: Harris, Barry P. <Barry.Harris@BankofAmerica.com>; Bensing, Lori S. <lori.s.bensing@bankofamerica.com>; Hearn, Mike <Mike.Hearn@BankofAmerica.com>  
 Sent: Fri Mar 26 10:28:33 2004  
 Subject: RE: need some offshore help

Is it sufficient to say that the beneficiaries of the trust are members of the Charles Wyly family and their immediate children and grandchildren subject to the discretion of the trustee?

-----Original Message-----  
 From: Harris, Barry P.  
 Sent: Thursday, March 25, 2004 6:21 PM  
 To: Bensing, Lori S.; Hearn, Mike  
 Cc: Schaufele, Louis J.; Hudgins, Steven E.; Wollard, Denise L.; Bowden, Theodore I.; Schroder, Alan; Hechtlinger, Susan; Rusnak, Geoff  
 Subject: Re: need some offshore help  
 Importance: High

Lori, I think you have I'd'ed 2 distinct issues. On the first, I would assume that a letter from the corp GC wou satisfy NFS that the stock is neither control nor restricted.

The second, AML/Patriot Act, more problematic. I presume the trustee is not BofA. If not, I believe that our policies require that we know the I'd of all beneficiaries as is required by law. If the trustees or beneficiaries are unwilling to disclose, I believe that leaves us and NFS with little option. The regulators leave us virtually no room, and a failure to follow our own policies (if I am correct on them) would be a significant breach in

Permanent Subcommittee on Investigations  
**EXHIBIT #21h**

1688

this sensitive area.

Mike/Susan/Geoff, your thoughts and expertise?

Barry

-----  
Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Bensing, Lori S. <lori.s.bensing@bankofamerica.com>  
To: Harris, Barry P. <Barry.Harris@BankofAmerica.com>; Hearn, Mike  
<Mike.Hearn@BankofAmerica.com>  
CC: Schaufele, Louis J. <louis.j.schaufele@bankofamerica.com>; Hudgins,  
Steven E, <Steven.Hudgins@BankofAmerica.com>; Wollard, Denise L.  
<denise.l.wollard@bankofamerica.com>  
Sent: Thu Mar 25 17:43:15 2004  
Subject: need some offshore help

Jim Dwiggins suggested floating this out to both of you.  
At conversion, Barry you may remember that we got approval to hold several  
Isle of Man accounts. We have been experiencing a lot of difficulty with  
NFS on these accounts since conversion and in particular 10 accounts that  
hold MIK stock (Michael's Stores). These accounts were created a number of  
years ago by trusts and according to the directorate the accounts share  
several of the same beneficiaries (various Wyly Family members and various  
charities). In short, NFS thinks that there might be Patriot Act issues and  
that the stock might be affiliated in some way. MUCH of their  
misunderstanding stems from a general lack of knowledge of the purpose and  
benefits of offshore accounts. The stock transferred in as clean stock but  
if need be we can go to corporate counsel for Michaels and get an opinion  
(1.7mm shares total) or statement that the shares are not affiliated. We  
can also go to the Isle of Man attorney for these accounts and get some  
letter that states that the beneficiaries are not terrorists. What we  
probably cannot do is get a list of the names, addresses and social security  
numbers of the beneficiaries. I am afraid that if we can't provide this that  
they may tell us to move the accounts. We may need someone from legal to  
help us with this (I should mention that RAI compliance is satisfied). Your  
thoughts?

Lori Bensing  
Managing Director, Sales Manager  
Bank of America Private Bank  
Banc of America Investment Services, Inc.  
214-220-3405 ph  
214-220-3418 fax

From: Schaufele, Louis J. [louis.j.schaufele@bankofamerica.com]  
 Sent: Wednesday, May 26, 2004 7:24 PM  
 To: 'cpulman@meadowsowens.com'  
 Subject: Fw: IOM

Charles thanks for the call, I have attached an email from Phil Wertz and would appreciate any comments you might have. I think bottom line is the IF scenario we spoke of. You can see Phil seems pretty adamant on it.  
 Thanks

Michele is my asst. And fwd phil's email.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Crittenden, Michele M. <michele.m.crittenden@bankofamerica.com>  
 To: Schaufele, Louis J. <louis.j.schaufele@bankofamerica.com>  
 Sent: Wed May 26 17:27:55 2004  
 Subject: IOM

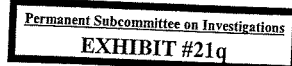
cpulman@meadowsowens.com

Set forth below is the relevant text of Section 312 of Patriot Act. As the proposed regulations are not yet final, the interim rules state that we must apply with the statutory language itself. Section 3(A) is pretty clear about the need to identify beneficial owners. The proposed rules (which will eventually be finalized) would clarify some of the scope of the rules. For example, it provided that you need to identify the holders of beneficial ownership interests if they have a right to at least \$1MM or 5% of the value of the account (therefore setting a de minimus threshold).

All of these rules are subject to interpretation and therefore it is difficult to say it is black and white, however, I don't think this is as gray as their counsel argues it is. They argued that it is not technically a "private banking account". They argued that it is not necessarily a non-US customer if you drill down to the beneficial owners. They argued that the family may not technically have "beneficial ownership interests" depending on how that term is defined. As pointed out to their counsel, the issue we face is that the Banking Regulators and Congress are interpreting the Patriot Act rules with a mindset that expects banks to not split hairs on technicalities and to go beyond the letter of the rules. When the final rules are published, I think they will be relatively consistent with the proposed rules. This was also the basis of our Corporate Policy. I would not feel comfortable advising the bank that our policy should eliminate the need for this information in all cases, so I believe you must argue that you have done enough to warrant an exception to the general rule.

If the decision is made to keep the account open, we will take the position that we have sufficient information in the file and know enough overall to satisfy this legal obligation. Without the names themselves, I think there is a risk that we will be deemed to have not met that obligation under Section 312. Without the names themselves, there is also a risk that we are criticized because we are unable to screen these people against OFAC and other terrorist lists that are issued from time to time. None of those are guarantees of a legal violation or a regulatory sanction and therefore must be weighed by the business unit.

I must admit that I have not heard any persuasive arguments from the client



about why they should withhold the names, other than that they just want to maintain secrecy. I agree with the IOM counsel that the director couldn't give the names without consent of their clients, but I have confirmed that we get such consent all the time for offshore trusts that we manage when faced with such circumstances. Given how much we know overall and your relationship with them, I don't understand why they would object if the director asked for their consent.

Section 312

"(1) IN GENERAL.--Each financial institution that establishes, maintains, administers, or manages a private banking account or a correspondent account in the United States for a non-United States person, including a foreign individual visiting the United States, or a representative of a non-United States person shall establish appropriate, specific, and, where necessary, enhanced, due diligence policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through those accounts.

"(3) MINIMUM STANDARDS FOR PRIVATE BANKING ACCOUNTS.--If a private banking account is requested or maintained by, or on behalf of, a non-United States person, then the due diligence policies, procedures, and controls required under paragraph (1) shall, at a minimum, ensure that the financial institution takes reasonable steps--

"(A) to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, such account as needed to guard against money laundering and report any suspicious transactions under subsection (g); and

"(B) to conduct enhanced scrutiny of any such account that is requested or maintained by, or on behalf of, a senior foreign political figure, or any immediate family member or close associate of a senior foreign political figure that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

"(4) DEFINITION.--For purposes of this subsection, the following definitions shall apply:

"(B) PRIVATE BANKING ACCOUNT.--The term 'private banking account' means an account (or any combination of accounts) that--

"(i) requires a minimum aggregate deposits of funds or other assets of not less 24 than \$1,000,000;

B7

"(ii) is established on behalf of 1 or more individuals who have a direct or beneficial ownership interest in the account; and

"(iii) is assigned to, or is administered or managed by, in whole or in part, an officer, employee, or agent of a financial institution acting as a liaison between the financial institution and the direct or beneficial owner of the account."

-----Original Message-----

From: Schaufele, Louis J

1691

Sent: Tuesday, May 25, 2004 9:46 AM  
To: Wertz, Phillip  
Subject: RE: IOM

We are having a conference call with Tim Maloney. In your opinion (setting corporate policy aside), would you classify this as a black and white issue or grey? I would assume you would say grey given that the final version of Patriot is not out yet? I have attached my history on the relationship that I sent to Maloney.  
thanks

-----Original Message-----

From: Wertz, Phillip [mailto:Phillip.Wertz@bankofamerica.com]  
Sent: Tuesday, May 25, 2004 8:39 AM  
To: Schaufele, Louis J  
Subject: RE: IOM

I have not spoken to him about the MIK issue, but our problem is really a US law issue and a Corporate Policy issue.

-----Original Message-----

From: Schaufele, Louis J  
Sent: Tuesday, May 25, 2004 8:05 AM  
To: Wertz, Phillip  
Subject: IOM

Have you spoken with Daniel Shonfeld, as I understand it he is the UK AML advisor. I just wondered if the UK folks have any different interpretation.  
thanks

Lou Schaufele  
Managing Director / Investments  
Private Client Advisor  
Bank of America Private Bank  
Banc of America Investment Services, Inc.  
214 303 2916  
214-303-2980 fax



**From:** White, Phil [phil.white@bankofamerica.com]  
**Sent:** Friday, October 15, 2004 5:24 PM  
**To:** Maloney, Timothy P.  
**Subject:** FW: Michaels Stores

Tim, from our conversation yesterday, I gathered that "supervision" of these was an issue for NFS. And I have asked Lou to do some homework on how often they move stock. It has only happened once and he doesn't anticipate it happening again. And as he points out, the transfer agent isn't going to allow legend stock to be moved. I really beleive that if we can't accomodate these folks somehow, we're putting a very large relationship at risk. I wanted you to have this before our conversation Monday.

-----Original Message-----

**From:** Schaufele, Louis J.  
**Sent:** Friday, October 15, 2004 2:17 PM  
**To:** White, Phil  
**Cc:** Chandler, Scott; Bersing, Lori S.  
**Subject:** Michaels Stores

It seems that 144 and affiliation is a question along with AML issues. I gathered that a comment is that they move stock all the time from entity to entity. In checking our notes we can only find one instance where they moved stock was only one time, they moved 25k shares from one account to another (with proper documentation). Having dealt with these entitles for several years this is a very rare event. First on the 144 issue, the stock was transferred in here (BoFA) clean with out a legend. Usually a transfer agent is a good source as to whether certificates are legended or not. The other side of this is that the Wylly's do not claim ownership of this stock in any proxy materials. At one point we talked about getting a statement from corporate counsel that says that this is not affiliate stock (however I think we can tell that without it and are really asking the client to go above and beyond).

In regard to the beneficiary issues, I do not think they will give us the names (they have told me this as recently as last week). I do think we can get them to complete NFS' questionnaire with out the beneficiaries. I have had discussions with the protectorate and think that they would be willing to go to an independent party (lawyer type) to give some letter that says that beneficiaries are not on any AML list. Actually they have already done this with an Isle of Man attorney.

Hopefully we can figure this out, the clients have opened accounts at other US financial institutions in 2004. I have attached a dated email that covers some of this, read all entries and also the recent proxy.



RE: need some PRINCIPAL  
 offshore help CCHOLDERS AND M

thanks

Lou Schaufele  
 Managing Director / Investments  
 Private Client Advisor  
 Bank of America Private Bank  
 Banc of America Investment Services, Inc.  
 214 303 2916  
 214-303-2980 fax

Permanent Subcommittee on Investigations  
 EXHIBIT #21w

BA 14884

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**From:** Hearn, Mike  
**Sent:** Friday, March 26, 2004 10:58 AM  
**To:** Schaufele, Louis J.  
**Subject:** RE: need some offshore help

will do if it is in a written form that is that clear..... hope it is, Mike

-----Original Message-----  
**From:** Schaufele, Louis J.  
**Sent:** Friday, March 26, 2004 10:53 AM  
**To:** Hearn, Mike  
**Subject:** RE: need some offshore help

If that is the case could you get me the actual ruling so I can show the client.  
 thanks

-----Original Message-----  
**From:** Hearn, Mike  
**Sent:** Friday, March 26, 2004 9:51 AM  
**To:** Schaufele, Louis J.; Harris, Barry P.; Bensing, Lori S.  
**Cc:** Mitchell, David  
**Subject:** RE: need some offshore help

I will ask one of the patriot act experts to see what they say about this type of account, but my best guess is that we would need the names and SS numbers for all the adult benies, as there is not a US based financial institutions between us and the ultimate clients... will let you know, Mike

-----Original Message-----  
**From:** Schaufele, Louis J.  
**Sent:** Friday, March 26, 2004 10:29 AM  
**To:** Harris, Barry P.; Bensing, Lori S.; Hearn, Mike  
**Subject:** RE: need some offshore help

Is it sufficient to say that the beneficiaries of the trust are members of the Charles Wyly family and their immediate children and grandchildren subject to the discretion of the trustee?

-----Original Message-----  
**From:** Harris, Barry P.  
**Sent:** Thursday, March 25, 2004 6:21 PM  
**To:** Bensing, Lori S.; Hearn, Mike  
**Cc:** Schaufele, Louis J.; Hudgins, Steven E.; Wollard, Denise L.; Bowden, Theodore I.; Schroder, Alan; Hechtlinger, Susan; Rusnak, Geoff  
**Subject:** Re: need some offshore help  
**Importance:** High

Lori, I think you have I'd'ed 2 distinct issues. On the first, I would assume that a letter from the corp GC wou satisfy NFS that the stock is neither control nor restricted.

The second, AML/Patriot Act, more problematic. I presume the trustee is not BofA. If not, I believe that our policies require that we know the I'd of all beneficiaries as is required by law. If the trustees or beneficiaries are unwilling to disclose, I believe that leaves us and NFS with little option. The regulators leave us virtually no room, and a failure to follow our own policies (if I am correct on them) would be a significant breach in this sensitive area.

1694

Mike/Susan/Geoff, your thoughts and expertise?

Barry

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Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Bensing, Lori S. <lori.s.bensing@bankofamerica.com>  
To: Harris, Barry P. <Barry.Harris@BankofAmerica.com>; Hearn, Mike  
<Mike.Hearn@BankofAmerica.com>  
CC: Schaufele, Louis J. <louis.j.schaufele@bankofamerica.com>; Hudgins, Steven E,  
<Steven.Hudgins@BankofAmerica.com>; Wollard, Denise L.  
<denise.l.wollard@bankofamerica.com>  
Sent: Thu Mar 25 17:43:15 2004  
Subject: need some offshore help

Jim Dwiggins suggested floating this out to both of you.

At conversion, Barry you may remember that we got approval to hold several Isle of Man accounts. We have been experiencing a lot of difficulty with NFS on these accounts since conversion and in particular 10 accounts that hold MIK stock (Michael's Stores). These accounts were created a number of years ago by trusts and according to the directorate the accounts share several of the same beneficiaries (various Wyly Family members and various charities). In short, NFS thinks that there might be Patriot Act issues and that the stock might be affiliated in some way. MUCH of their misunderstanding stems from a general lack of knowledge of the purpose and benefits of offshore accounts. The stock transferred in as clean stock but if need be we can go to corporate counsel for Michaels and get an opinion (1.7mm shares total) or statement that the shares are not affiliated. We can also go to the Isle of Man attorney for these accounts and get some letter that states that the beneficiaries are not terrorists. What we probably cannot do is get a list of the names, addresses and social security numbers of the beneficiaries. I am afraid that if we can't provide this that they may tell us to move the accounts. We may need someone from legal to help us with this (I should mention that BAI compliance is satisfied). Your thoughts?

Lori Bensing  
Managing Director, Sales Manager  
Bank of America Private Bank  
Banc of America Investment Services, Inc.  
214-220-3405 ph  
214-220-3418 fax

The following table sets forth information as of March 31, 2004 regarding the beneficial ownership of common stock by each person known by Michaels to own 5% or more of the outstanding shares of common stock, each director of Michaels, each Named Executive (as defined in "Management Compensation — Summary Compensation Table" herein), and the directors and executive officers of Michaels as a group. The persons named in the table have sole voting and investment power with respect to all shares of common stock owned by them, unless otherwise noted. The percentage of beneficial ownership is calculated based on 68,336,733 shares of common stock outstanding as of March 31, 2004.

Name of Beneficial Owner	Amount and Nature of Beneficial Ownership(1)	Percent of Class
Charles J. Wyly, Jr.	1,479,859 (2)	2.2%
Sam Wyly	1,357,333 (3)	2.0%
Richard E. Hanlon	101,300 (4)	*
Richard C. Marcus	77,000 (5)	*
Liz Minyard	52,500 (6)	*
Cece Smith	35,000 (7)	*
R. Michael Rouleau	534,693 (8)	*
Jeffrey N. Boyer	25,000 (9)	*
Edward F. Sadler	129,166 (10)	*
Ronald S. Staffieri	33,333 (11)	*
Capital Research and Management Company 333 South Hope Street Los Angeles, California 90071	9,528,000 (12)	13.9%
First Pacific Advisors, Inc. 11400 West Olympic Boulevard Suite 1200 Los Angeles, California 90064	3,618,700 (13)	5.3%
Putnam, LLC d/b/a Putnam Investments One Post Office Square Boston, Massachusetts 02109	4,496,106 (14)	6.6%
Wellington Management Company, LLP 75 State Street Boston, Massachusetts 02109	6,234,780 (15)	9.1%
All current directors and executive officers as a group (22 persons)	4,083,311 (16)	5.8%

\* Less than one percent.

- (1) Pursuant to Rule 13d-3 under the Securities Exchange Act of 1934, a person has beneficial ownership of any securities as to which such person, directly or indirectly, through any contract, arrangement, undertaking, relationship or otherwise has or shares voting power and/or investment power or as to which such person has the right to acquire such voting and/or investment power within 60 days. Percentage of beneficial ownership by a person as of a particular date is calculated by dividing the number of shares beneficially owned by such person by the sum of the number of shares outstanding as of such date and the number of unissued shares as to which such person has the right to acquire voting and/or investment power within 60 days. The number of shares shown includes outstanding shares of common stock owned as of March 31, 2004 by the person indicated and shares underlying options owned by such person on March 31, 2004 that are exercisable within 60 days of that date. Persons holding shares of common stock pursuant to the Michaels Stores, Inc. Employees 401(k) Plan, as amended and restated, have sole voting power and investment power with respect to such shares.

- (2) Includes 336,666 shares under options; 380,205 shares held of record by Stargate, Ltd. (a limited partnership, the general partner of which is a trust of which Mr. Wyly is one of the trustees); 207,604 shares held of record by Shadywood USA, Ltd. (a limited partnership of which Mr. Wyly is the general partner); and 555,284 shares held of record by family trusts of which Mr. Wyly is the trustee.
- (3) Includes 353,332 shares under options; 200,000 shares held of record by Tallulah, Ltd. (a limited partnership of which Mr. Wyly is the general partner); 149,572 shares held of record by family trusts of which Mr. Wyly is the trustee; and 14,020 shares owned by Mr. Wyly's spouse.
- (4) Includes 70,000 shares under options and 10,167 shares held of record by a family trust of which Mr. Hanlon is a co-trustee.
- (5) Includes 70,000 shares under options.
- (6) Includes 52,500 shares under options.
- (7) Includes 35,000 shares under options.
- (8) Includes 466,666 shares under options; 6,039 shares owned pursuant to our 401(k) Plan; and 20,000 shares which Mr. Rouleau owns jointly with his spouse.
- (9) Includes 25,000 shares under options.
- (10) Includes 129,166 shares under options.
- (11) Includes 33,333 shares under options.
- (2) Based on an amendment to a Schedule 13G filed with the Securities and Exchange Commission, dated February 10, 2004, Capital Research and Management Company, a registered investment adviser, has the sole power to dispose or direct the disposition of 9,528,000 shares of common stock but has no power to vote or direct the vote of such shares.
- (13) Based on a Schedule 13G filed with the Securities and Exchange Commission, dated February 5, 2004, First Pacific Advisors, Inc., an investment advisor, shares the power to vote or direct the vote of 1,496,100 shares of common stock and shares the power to dispose or direct the disposition of 3,618,700 shares of common stock.
- (14) Based on an amendment to a Schedule 13G filed with the Securities and Exchange Commission, dated February 9, 2004, Putnam, LLC d/b/a Putnam Investments, on behalf of itself and its parent and wholly-owned subsidiaries in their various capacities, shares the power to vote or direct the vote of 303,405 shares of common stock and shares the power to dispose or direct the disposition of 4,496,106 shares of common stock.
- (15) Based on a Schedule 13G filed with the Securities and Exchange Commission, dated February 13, 2004, Wellington Management Company, LLP, an investment advisor, shares the power to vote or direct the vote of 4,895,660 shares of common stock and shares the power to dispose or direct the disposition of 6,234,780 shares of common stock.
- (16) Includes 1,794,243 shares under options; 10,848 shares owned pursuant to our 401(k) Plan held by executive officers, some of whom are not named in the table; and 1,080 shares an executive officer not named in the table owns jointly with his spouse.

---

**From:** Keeley Hennington  
**Sent:** Wednesday, October 03, 2001 1:01 PM  
**To:** mboucher@candw.ky  
**Subject:** Urgent - Charles

This was Quayle Ltd.

---

The preceding e-mail message (including any attachments) contains information that may be confidential, or constitute non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete it from your system. Use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

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----- Forwarded by Keeley Hennington/htst on 10/03/01 02:07 PM -----

Keeley Hennington  
 10/03/01 01:59 PM

To: mboucher@candw.ky  
 cc:  
 Subject: Urgent - Charles

Hey, Charles called and wanted to sell 100,000 shares of MIKE at \$42.00 or better today and asked me to call Lehman. They were okay with my verbal and just need you to follow up and get some instruction from the trustees also. They were selling today on my authorization. I really hope that is okay.

If you get a chance to call me later on all this other MIKE shit, feel free tonight at 972-503-0565

Thanks

---

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Permanent Subcommittee on Investigations

**EXHIBIT #25**

Confidential  
 SEC\_ED00000649

PSI\_ED00000649

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**From:** Keeley Hennington  
**Sent:** Thursday, October 04, 2001 5:05 AM  
**To:** "Michelle Boucher" <mboucher@candw.ky>  
**Subject:** Re: Fw: Quayle

yep call me when you get in. I am so sorry about calling over there, I just did not know what problems it would cause. Talk to you later

---

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---

"Michelle Boucher" <mboucher@candw.ky>  
 10/03/01 07:39 PM

To: <khennington@htst.com>  
 cc:  
 Subject: Fw: Quayle

I think you know this already.

-----Original Message-----  
**From:** Schaufele, Louis J <lschaufe@lehman.com>  
**To:** 'michelle boucher' <mboucher@candw.ky>  
**Date:** Wednesday, October 03, 2001 4:19 PM  
**Subject:** Quayle

>We sold 82,500 Michael Stores today for Quayle.

>  
 >> -----  
 >> ----  
 >> -----  
 >> This message is for informational purposes only and is intended only  
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>
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RESPONSES TO SUPPLEMENTAL QUESTION FOR THE RECORD  
SUBMITTED BY  
SENATOR NORM COLEMAN  
and  
SENATOR CARL LEVIN  
to  
MICHAEL G. CHATZKY  
Chatzky & Associates

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
HEARING ON  
*TAX HAVEN ABUSES:*  
*THE ENABLERS, THE TOOLS & SECRECY*  
August 1, 2006

1. Describe your involvement in designing or structuring the Wyllys' offshore plan including the trust structure and the stock option annuity swaps.

**Response:** I provided legal advice regarding the design and structuring of certain trusts and annuity transactions at the request of and in conjunction with Michael French, a partner at the law firm of Jackson & Walker, LLP, who acted as coordinating counsel for Messrs. Sam Wyly and Charles Wyly. Further detail would require disclosing privileged and confidential information.

2. Attached is Exhibit 34b which is a cover letter from you to Mr. Tedder and Mr. Michael French, together with a number of opinions, one of which is also attached. With this cover letter, it appears that you are sending Mr. Tedder opinions that are addressed to Nevada Corporations and were signed by Mr. Tedder.

- a. Why were you sending the opinions to Mr. Tedder?

**Response:** The letter and attachments were sent by my office (note the signature at the bottom of the page is not mine, but that of a member of our staff). It appears that this was an end of project distribution of final executed copies to Mr. Tedder and Mr. French for their files.

- b. Who authored these opinions?
  - i. Did you have a role in preparing these opinions?
  - ii. If so, what was your role?

**Response:** Generally speaking, the drafting of a legal opinion is, in my practice, a collaborative effort. These opinions were initially drafted by myself and my law firm,

with input from other attorneys, including, but not limited to, Mr. Tedder and Mr. French. Mr. French played an extensive role in planning, organizing, and drafting the structure and documentation for the trusts and transactions with which I was involved that are the subject of this Subcommittee's Report<sup>1</sup> ("the Report").

- c. Who asked you to participate in preparing these opinions?  
Who did you bill for these opinions and who remitted payment?**

**Response:** My primary contact was with Michael French, who coordinated and directed the drafting of these opinions as general counsel to the Wyly family. With regard to billing, see answer to 3.b. below.

- d. Who decided what issues to address in the opinions?  
Was it left to the authors of the opinions to determine what issues were material, or were the authors instructed to provide opinions with respect to certain issues?**

**Response:** As discussed above, drafting an opinion is generally a collaborative process. Specific details regarding this process sought by this question are privileged. See answer to 2.b. above.

- e. Who provided the facts and representations upon which the opinions were based?  
Did any of the authors have any input into what facts or representations were provided? If so, which authors and which facts or representations did they affect?**

**Response:** As discussed above, drafting an opinion is generally a collaborative process. Generally speaking, the clients – or, in the case of the Wyls, Michael French – contributed information from which the material facts were determined. Of course, the authors must participate in determining which facts are material to the analysis. Specific details regarding this process sought by this question are privileged. See answer to 2.b. above.

- f. Who recommended that the Wyls initially make the annuity agreements with the Nevada corporations, rather than making the agreements directly with the Isle of Man corporations? Why?**

**Response:** As discussed above, drafting an opinion is generally a collaborative process. Specific details sought by this question are privileged. See answer to 2.b. above. In addition, I refer the Subcommittee to my testimony at the hearing, dated August 1, 2006.

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<sup>1</sup> *Tax Haven Abuses: The Enablers, The Tools and Secrecy*. Minority & Majority Staff Report. United States Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs. Released in conjunction with the Permanent Subcommittee on Investigations August 1, 2006 hearing.

At the Hearing, I spoke generically regarding one reason why a person may have entered into an annuity agreement with a Nevada Corporation, instead of an offshore corporation.

**3. Exhibit 34d is attached. This is a legal opinion on your letterhead addressed to the Tallulah International Trust dated February 22, 1996, and it is signed by you on page 20.**

- a. How many opinions did you write on the same or similar matters in 1996 for any Wyly related offshore trust or corporation owned by the offshore trusts? Please identify each individual or entity for which an opinion was issued.**

**Response:** Based upon a review of the Report, it appears that you have determined that there were 10 transactions in 1996 that were "*the same or similar*" to the subject matter of Exhibit 34d. (See the Report Chart entitled Transferring Assets Offshore, subtitled 1996 Stock Option-Annuity Swaps following page 195). An opinion letter was drafted and addressed to each trust listed in this Report Chart in the Report.

- b. Who retained you to provide these opinions?  
Who did you bill for these opinions and who remitted payment?**

**Response:** Generally speaking, it is common for a person to retain a trusts and estates lawyer to set up trusts and other entities for estate planning purposes. Once those trusts and other entities are set up, the obligation for payment may be borne by either the original client, or the newly formed entities. It is often the case that the entities then retain the same lawyer to obtain legal advice for which those entities are billed separately from the original client. As the Subcommittee is aware, in this instance, the trusts each were billed and remitted payment for the opinions. Further details regarding this process sought by this question are privileged and confidential.

- c. Who decided what issues to address in the opinions?**

**Response:** See answers to 2.b. and 2.d. above. Further details regarding this process sought by this question are privileged.

- i. Was it left to you to determine what issues were material, or were you instructed to provide opinions with respect to certain issues?**

**Response:** See answers to 2.b. and 2.d. above. Further details regarding this process sought by this question are privileged.

ii. **Who provided the facts and representations upon which the opinions were based?**

**Response:** See answers to 2.b. and 2.e. above. Specific details regarding this process sought by this question are privileged.

iii. **Did you have any input into what facts or representations were provided?  
If so, which facts or representations did you affect?**

**Response:** See answers to 2.b. and 2.e. above. Specific details regarding this process sought by this question are privileged.

d. **The opinion does not discuss the relationships between the trusts and the corporations or whether the Wyls exercised any control over the offshore trusts and corporations. What did you understand about the independence of the offshore trusts and corporations and the role(s) played by Mr. Sam Wyly and Mr. Charles Wyly with respect to the decisions and activities of those trusts and corporations?**

**Response:** The information sought by this question is privileged. In addition, this question, as presented, is not meaningful for six reasons.

First, the statement introducing the question is not accurate because the opinion, on its face starting at page 3 under Factual Foundation, does discuss *“the relationships between the trusts and the corporations or whether the Wyls exercised any control over the offshore trusts and corporations.”*

Second, the focus of this question on *“the offshore trusts and corporations”* is overly broad. An analysis of the relationships between the trusts and the corporations and whether Sam Wyly or Charles Wyly exercised “control” over these entities is irrelevant to the opinion. According to the Report, Tallulah International Trust entered into the annuity agreement with Yurta Faf, a corporation owned by Bessie Trust. (See the Report Chart entitled Transferring Assets Offshore following page 195 (stating Yurta Faf owned by Bessie Trust)). Again as noted in the Report, Bessie Trust was settled in the year 1994, with Sam Wyly and other family members named as beneficiaries. (See the Report at page 334). Accordingly, the analysis must focus on the specific entities involved and not a general discussion of the offshore trusts and corporations.

Third, generally speaking, an analysis of “control” would not be material. An analysis would focus on the fact that Yurta Faf had independent directors, and that the sole shareholder of Yurta Faf, Bessie Trust, was an independent trust. The trustee of Bessie Trust possessed the legal rights and powers under the trust deeds and applicable law to make decisions on behalf of the trust. Because the trustee of Bessie Trust possessed the requisite control over the trust’s assets, and because the annuitant expressly renounced control of the assets exchanged for the annuity in the annuity agreement, the issue of

control would not be material to an opinion addressing whether the annuity transaction was a taxable event in 1996.

Fourth, the question's focus on the roles of Sam Wyly and Charles Wyly is misplaced. Sam Wyly was a beneficiary of the Bessie Trust – Charles Wyly is not.<sup>1</sup> With regard to Sam Wyly, it is normal, reasonable, and expected for beneficiaries to communicate – through protectors or otherwise – to trustees regarding transactions involving trust assets. Indeed, it would be abnormal for a trustee not to communicate with the beneficiaries of a trust to make business decisions that impact the trust assets.

Fifth, similarly, a trustee owes fiduciary duties as to all beneficiaries of the trust. This effectively precludes the trustee from relinquishing control to a particular beneficiary of the trust.

Sixth, the key issue for any income tax opinion regarding a private annuity transaction is the determination whether the transfer of property in exchange for the acquisition of the private annuity is a taxable event. Therefore, the focus of any such inquiry should be whether the transaction was at arm's-length, not on the control of either party to the transaction because even if an exchange of property for a private annuity is between family members (e.g., a father and a daughter), an exchange for fair-market value is indicative of an arm's-length transaction.

In conclusion, for the reasons above, I believe that a further discussion of *“the relationships between the trusts and the corporations or whether the Wyllys exercised any control over the offshore trusts and corporations,”* would not be material to an opinion regarding the tax implications of an annuity transaction in 1996.

- e. **Did anyone tell you that the Wyllys had appointed trust protectors with respect to each of the offshore trusts? If yes, who told you? Would this have had a material impact on the conclusions reached in your opinions?**

**Response:** The information sought by this question is privileged. In addition, a tax opinion should not omit facts that were considered material of which the authors were aware at the time. It is my practice to review the trust deeds of trusts for which I am providing legal advice. Thus, if an opinion did not include a discussion of the fact that a Protector was provided for under the trust deed, the authors did not consider this fact material to the analysis in the opinion. See answer to 3.d. above.

---

<sup>2</sup> See the Report at page 334.

- f. **Did anyone tell you that the Wyllys and their representatives passed instructions along to the offshore trustees through the trust protectors? If yes, who told you? Would this have had a material impact on the conclusions reached in your opinions?**

**Response:** See answers to 3.d. and 3.e. above. Further details regarding this process sought by this question are privileged.

- g. **The February 22, 1996 opinion does not address any issues related to the Wyllys' personal tax treatment of the option/annuity swaps. Do you know whether any opinions were issued to the Wyllys with regard to these transactions? Would the tax position taken by the Wyllys with respect to the stock option annuity swaps have impacted your tax opinions issued to the trusts?**

**Response:** According to Exhibit 34d, Tallulah International Trust was a foreign situs Grantor Trust settled by Sam Wyly. Generally speaking, a grantor trust is treated as "owned" by the settlor for United States federal income tax purposes. Accordingly, the tax treatment for the trust would be reflected on the income tax return of the settlor, if the settlor is subject to United States federal income tax.

# # #

**MICHAEL GARY CHATZKY**  
A LAW CORPORATION  
762 EL PASEO DE SARATOGA  
SAN JOSE, CALIFORNIA 95130  
(408) 379-4611  
FAX NO. (408) 379-4687

April 10, 1992

Mr. David Tedder, Esq.  
The Sands Hotel  
3355 Las Vegas Blvd. South  
Las Vegas, Nevada 89109

Mr. Michael French, Esq.  
Jackson & Walker  
901 Main Street  
Suite 6000  
Dallas, Texas 75202

Dear Mr. Tedder:

Enclosed please find a copy of each of the following documents.

I.) Section 83 TAX OPINIONS addressed to:

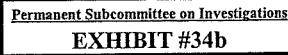
- a. EAST BATON ROUGE LIMITED
- b. RICHLAND LIMITED
- c. TENSAS LIMITED
- d. MOREHOUSE LIMITED
- e. WEST CARROLL LIMITED
- f. ROARING FORK LIMITED
- g. ROARING CREEK LIMITED

II.) Private Annuity Agreements:

- a. PRIVATE ANNUITY ISSUED FROM EAST BATON ROUGE LIMITED TO SAM WYLY
- b. PRIVATE ANNUITY ISSUED FROM TENSAS LIMITED TO SAM WYLY
- c. PRIVATE ANNUITY ISSUED FROM RICHLAND LIMITED TO SAM WYLY
- d. PRIVATE ANNUITY ISSUED FROM WEST CARROLL LIMITED TO SAM WYLY
- e. PRIVATE ANNUITY ISSUED FROM ROARING CREEK LIMITED TO CHARLES WYLY
- f. PRIVATE ANNUITY ISSUED FROM ROARING FORK LIMITED TO CHARLES WYLY
- g. PRIVATE ANNUITY ISSUED FROM MOREHOUSE LIMITED TO SAM WYLY
- h. PRIVATE ANNUITY ISSUED FROM ROARING CREEK LIMITED TO CAROLINE WYLY
- i. PRIVATE ANNUITY ISSUED FROM ROARING FORK LIMITED TO CAROLINE WYLY

III.) OTHER

- a. MODEL ASSUMPTION AGREEMENT
- b. TWO LETTERS FROM DAVID TEDDER
  - 1. TO MICHAELS STORES INC.
  - 2. TO STERLING SOFTWARE (Regarding the Section 83 Tax Opinion)

PSI-WYBR 00270

PRATTER, TEDDER & GRAVES  
ATTORNEYS AT LAW

CENTURY CITY OFFICE  
101 AVENUE OF THE STARS  
SIXTEENTH FLOOR  
LOS ANGELES, CA 90067  
TELEPHONE (213) 278-2267  
FAX (213) 278-4949

ORANGE COUNTY OFFICE  
1100 TOWN & COUNTRY ROAD  
SUITE 700  
ORANGE, CA 92668  
TELEPHONE (714) 867-0070  
FAX (714) 867-1111

April 2, 1992

REPLY TO \_\_\_\_\_

East Baton Rouge Limited  
One East First Street  
Reno, Nevada 89501

Dear East Baton Rouge Limited:

You have requested the firm of Pratter, Tedder & Graves to provide you with our opinion with respect to the anticipated federal income tax treatment relating to the following matters:

1. Your anticipated federal income tax treatment to you, a Nevada corporation, relating to your acquisition and sale of Michaels Stores Inc., 200,000 Option (hereinafter referred to as Securities) in exchange for your issuing a private annuity to Sam Wyly.
2. Your anticipated federal income tax treatment that would likely apply if you were to subsequently relinquish your obligation to pay the private annuity referred to in Paragraph 1 above, provided that you relinquish such liability by paying the assuming party assets of a value worth the equivalent of the annuity liability.
3. The anticipated federal excise tax treatment under Internal Revenue Code sections 4371 and following regarding a possible subsequent assumption of the obligation to pay the private annuity payments by a foreign corporation not engaged in a trade or business in the United States in exchange for its receiving cash or an asset worth the equivalent value of the annuity liability.

Before we provide you with our analysis of each of these issues we wish to make you aware that this opinion letter is merely an expression of our learned views with respect to these issues. Our opinion does not command any legal authority and may be rejected by a government official, agency, private party, or anyone else. Our opinion thus has no binding authority or official status of any kind, type, or character. We cannot assure you or anyone else that the opinions and conclusions contained in this opinion letter will be sustained by the Internal Revenue Service, any court of law, or anyone else. Our opinions represent our views on these issues, but they do not represent our guarantee that they will be followed or accepted by anyone else.

In addition, our opinions do not cover or address any issues not covered herein.

PSI-WYBR 00028



Our opinions are based on the status of the federal income tax law as of the date of this written opinion. The tax laws change rapidly, and should there be any change in the applicable law or the facts and circumstances relating to the events described herein, the opinions expressed herein necessarily require a reevaluation in the light of such changes.

There is no assurance that the Internal Revenue Service or anyone else will not raise issues that have not been addressed herein.

For the sake of brevity, our discussion of the applicable legal principles will omit certain cases and other authorities that may apply to the facts and circumstances of these matters. We will take them into account in issuing this opinion letter, however.

In the event any change impacts on the tax principles or laws applicable to our opinions herein, we specifically disclaim any undertaking or obligation to advise you or anyone else of any such changes which may hereafter occur.

Our opinions are based on the correctness of the facts and circumstances set forth herein.

The Internal Revenue Service and applicable courts possess the ability to challenge the legitimacy and reality of an entity or a transaction and can claim that an entity or a transaction are something other than what the parties intended them to be. Government authorities can recharacterize a transaction into something other than what the parties intended.

There are numerous instances when the Internal Revenue Service, courts or judges are in error. They are not infallible. They can thus misread or misapply the legal principles involved in the case, leading to a tax result that may be contrary to what the taxpayer anticipated, and leading to a tax result that may be wrong.

The Internal Revenue Service, and the courts generally examine the substance and business purpose and economic reality behind a transaction in a very careful manner to determine if the transaction is genuine and is to be granted recognition in the form presented for tax purposes.

Consequently, we need to caution you that the Internal Revenue Service, or a court might view the transactions that are the subject of this opinion letter in a manner differently than either you or I would view them. Nonetheless, it is our opinion that the anticipated and intended transactions and entities described herein are more likely than not to be given recognition as being treated in the manner expressed herein. This view will be enhanced by the proper operation of the entities and transactions to comply with their intended consequences.

You should be aware that the Internal Revenue Service can charge interest on tax deficiencies and can impose numerous penalties if

it disagrees with the tax treatment of the reported transactions.

It is our view based on the information presented to us as expressed herein that it is more likely than not that the anticipated federal tax treatment relating to the matters discussed herein will be as we opine herein.

**OPINION AND ANALYSIS OF THE FEDERAL INCOME TAX CONSEQUENCES THAT ARE LIKELY TO APPLY TO THE TRANSACTIONS DESCRIBED BELOW:**

A. The anticipated tax treatment relating to your acquisition and subsequent sale of Securities in exchange for your issuing a private annuity on the life of Sam Wyl.

Because there could be an unending list of possible factual circumstances regarding your purchase, ownership, and sale of the Securities in exchange for your issuing a private annuity, this opinion will only address your anticipated income tax basis with respect to such security interests.

Upon acquiring the Securities, you need to determine your income tax basis.

The income tax basis rules pertaining to the party contractually obligated to make the private annuity payments are discussed in depth in Warnick, 195-3rd T.M. Private Annuities at pages A-28 and A-29. These rules are predicated upon the principles set forth in Revenue Ruling 55-119.

Under this ruling, your unadjusted income tax basis equals the value of the annuity as of the date in which the annuity agreement is executed, assuming that there is no gift element involved.

It is our understanding that no gift element is involved in this transaction.

In the event the Securities are sold at a gain prior to the annuitant's death, your tax basis is equal to the total of the annuity payments made to the date of sale, plus the actuarial value of the annuity payments that are yet to be made under the annuity agreement. If the Securities are sold at a loss prior to the annuitant's death the tax basis equals the total of the annuity payments actually made as of the date of sale. If the selling price is less than the basis for gain but greater than the basis for loss purposes neither a gain nor a loss is recognized on your sale of the Securities.

If the Securities are sold after the annuitant's death, your basis for determining either gain or loss is equal to the total of the annuity payments which were made under the annuity contract.

If the Securities are sold before the annuitant's death, you remain obligated to make annuity payments to the annuitant. If gain were

recognized on the sale, then, because the actuarial value of the annuity was used by you in calculating your tax basis, you had, in essence, already taken into account the future annuity payments to be made under the annuity agreement using the actuarial values based on the anticipated life expectancy. Thus, the annuity payments made after the sale do not have a tax consequence to you until the total of such annuity payments exceeds the actuarial value that was used by you to calculate your gain, whereupon each annuity payment thereafter represents a deductible loss to you. However, if the annuitant dies before the after-sale payments equal the actuarial value of the annuity, then you will have taxable income in the year of the annuitant's death equal to the difference between the actuarial annuity value which was used by you in computing your taxable gain on the sale of the Securities and the total annuity payments made after the sale. (Thus, this "windfall" to you would not go untaxed.)

If you recognized a loss on the sale of the Securities, your tax basis would be merely the total of the annuity payments made prior to such sale, and you would not have been credited for any annuity payments you made after the sale. Consequently, each post-sale annuity payment made by you after such sale would generate a tax-deductible loss to you.

If you recognized neither a gain nor a loss on the sale of the Securities, then no loss would be recognized by you on further annuity payments until the total of all annuity payments made (both before and after the sale of the Securities) equals the amount realized by you from the sale. Thereafter, each annuity payment represents a tax-deductible loss to you.

After the annuitant's death, if the total of all annuity payments is less than the amount realized by you on the sale of the Securities, the difference is taxable income to you in the year of the death of the annuitant.

To circumvent this potentially large tax consequence, you might want to have another party assume your private annuity obligation in exchange for your payment of assets having an offsetting equivalent value. This will be discussed immediately below.

It is our opinion that it is more likely than not that the federal taxation method set forth in Revenue Ruling 55-119 as described above will be applied on the transactions described in this section of our opinion.

B. Your anticipated tax treatment if you subsequently relinquish your obligation to pay the private annuity referred to in Paragraph 1 above, provided you relinquish such liability by paying the assuming party assets of a value worth the equivalent of the annuity liability being relinquished.

You have requested us to provide you with our views as to your

anticipated federal income tax consequences relating to the situation in which you would enter into a contract with a foreign corporation which does not and will not engage in business in the United States, and does not and will not have an office in the United States or an agent in the United States, under which this foreign corporation would agree to assume the obligation to pay the private annuity to the annuitant in exchange for its receiving offsetting assets equivalent to the value of the annuity liability at the time of such transaction.

Under such circumstances and provided the value of the cash and/or other assets exchanged by you equals the value of the annuity obligation at the time of such transactions, it is our opinion that it is more likely than not that there should be no federal income tax consequence to you as you have incurred no economic gain or loss.

Thereafter, the death of the annuitant would likely not produce a federal tax consequence to either yourself (as you no longer owed the annuity obligation) or to the foreign assumption corporation (as it would not be subject to U.S. taxation) under the circumstances set forth above.

However, this approach is rather novel and the tax consequences are not free from doubt. It is our opinion that it is more likely than not that the assumption of the private annuity liability prior to the annuitant's death under the circumstances described above will be nontaxable to you as noted above.

C. The foreign corporation is not an insurer or reinsurer as those terms are properly defined and applied under Internal Revenue Code Sections 4371 and 4372, and therefore will not be subject to an excise tax if thereafter it subsequently assumes the obligation to pay the private annuity in exchange for assets worth the equivalent of the value of the annuity liability.

You have indicated it is possible that, in the future, a foreign corporation which does not engage in a trade or business in the United States will enter into a contract with you under which it will assume the obligation to pay the private annuity described above in exchange for assets worth the equivalent of the then-present value of the annuity liability.

Under the circumstances herein set forth, it is our opinion that it is more likely than not that such foreign corporation will not be subject to an excise tax under Internal Revenue Code Sections 4371 and 4372 for the foregoing reasons: (1) the foreign corporation is not an "insurer" or "reinsurer"; (2) the assumption of the payments of a private annuity in exchange for assets worth the equivalent of the present value of the annuity liability is not an assumption of a risk classifiable as a risk assumed by an "insurer" or

"reinsurer" under the proper terminology and customary usage in the insurance industry; and, (3) according to the legislative of Internal Revenue Code Section 4371, the statute applies to foreign entities engaged in the trade or business of insuring against, or with respect to, hazards, risks, losses, or liabilities within the United States and the foreign corporation in this anticipated situation is not engaged in such a trade or business and does not intend to become engaged in such a trade or business. Therefore, it is our opinion that it is more likely than not that the foreign corporation is not an insurer or reinsurer, and has not assumed a risk as an insurer or reinsurer for purposes of Internal Revenue Section 4371, and therefore will not be subject to an imposition of an excise tax under Internal Revenue Section 4371.

Internal Revenue Code Section 4371, in pertinent part, imposes a tax "on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer [emphasis added]...".

Internal Revenue Code Section 4372(a) defines a a foreign insurer or reinsurer as "...an insurer or reinsurer who is a nonresident alien individual, or a foreign partnership, or a foreign corporation. The term includes a nonresident alien individual, foreign partnership, or foreign corporation which shall become bound by an obligation of the nature of an indemnity bond."

Therefore, for the excise tax to apply to an "annuity contract" or "policy of reinsurance," it must be issued by a "foreign insurer or reinsurer."

Such is not the case here.

Neither the Internal Revenue Code nor the regulations thereunder nor the judicial taxation field decisions and Internal Revenue Service rulings clearly define the terms "foreign insurer or reinsurer." Consequently, we have looked to the leading treatises on insurance law and state court decisional law for assistance in defining such terms.

We have located no definitive case, ruling, or authoritative commentary that indicates that the excise tax imposed by Internal Revenue Code Section 4371 applies in the Private annuity context.

According to Black's Law Dictionary (5th Edition), insurer is defined as "[T]he underwriter or insurance company with whom a contract of insurance is made. The one who assumes risk or underwrites a policy, or the underwriter or company with whom a contract of insurance is made."

Appleman on Insurance Law and Practice further defines the terms in Section 7001: "[A]n 'insurer' is one who assumes risk or

underwrites a policy, or the underwriter or company with whom a contract of insurance is made."

It is thus our opinion that the proper and appropriate use of the term insurer is that it applies to an underwriter or an insurance company or one who assumes risk as that term is defined.

The foreign corporation is clearly not such an insurance company or underwriter. It will not be licensed or authorized to engage in the insurance business. Therefore, it will not meet the generally accepted definition of an insurer or reinsurer unless it is an entity which assumes a risk as an insurer.

An annuity is not a contract or an instrument of insurance risk. Furthermore, the foreign corporation is not issuing the annuity as it is merely assuming the obligation to pay the annuity.

Consequently, the foreign corporation should not be classified as an insurer under the generally accepted meaning of such term.

Thus, it is more likely than not that a foreign insurer or reinsurer referred to in Internal Revenue Code Sections 4371 and 4372 pertains to an underwriter or insurance company with whom a contract of insurance is made, and the foreign corporation, under the circumstances presented to us, is not such a company or underwriter.

Thompson, on Reinsurance, 4th Edition, page 639, states: "... insurance is a protection against loss or liability.... He pays the insurance company a premium. He becomes insured with this insurance company which is called the direct-writing company. A policy is delivered to him which is his contract with his insurer. The person or company insured by the direct-writing company is referred to in discussions as the insured, the assured, the original insured or the primitive assured. The original or primary insurer is obligated directly to his insured or policyholder".

An entity which assumes a risk as an insurer is an entity which makes, issues, continues, or renews instruments in the nature of an insurance policy or in the nature of an indemnity bond. For example, Couch on Insurance 2d Section 1:2 pp. 6 states: "[T]he primary requisite essential to a contract of insurance is the assumption of a risk of loss and the undertaking to indemnify the insured against such loss." Therefore, it is likely that Internal Revenue Code Sections 4371 and 4372 refer to foreign 'insurance' companies that are engaged in the business of assuming risks, issuing instruments in the nature of indemnity bonds, insurance policies and other instruments customarily issued by an insurer.

The foreign corporation is not such an entity and does not engage in foreign insurance transactions and does not issue instruments

customarily issued by an insurer. As a consequence, it is our opinion that it is more likely than not that the foreign corporation is not assuming the risk of an insurer, and thus will not be treated as an insurer when it assumes the obligation of the private annuity payments in exchange for assets worth the equivalent of the present value of the annuity liability.

Appleman on Insurance Law and Practice Section 61 states: "[A]n annuity is usually defined as being an obligation to pay a stated sum, usually monthly or annually, to a stated recipient, such payments to terminate upon the death of the designated beneficiary." Appleman citing Corporation Comm'n v. Equitable Life Insurance Society of U.S., 239 P.2d 360 (1952) in footnote 1 also states that "[I]nasmuch as annuity contracts do not insure against loss by reason of death of insured, but rather constitute investment of funds to be paid in installments during life of annuitant, annuity contracts are not a 'risk' based on contingency of loss....Since annuities are not policies or contracts of insurance (emphasis added), payments therefor are not generally regarded as premiums even though so called."

Couch on Insurance 2 in Section 1:20 in footnote 15 citing Prudential Insurance Co. v. Howell 29 NJ 116 (1959) finds that "[T]he risks assumed under life insurance policies and under annuity contracts are diametrically opposite inasmuch as life insurance involves the traditional elements of insurance, namely, shifting of risk of loss and distribution of risk of loss over a broad base whereas annuity contracts are basically investments."

Thus, it is more likely than not that the foreign corporation does not fit within the statutory definition of an insurer because it is neither an underwriter nor an insurance company engaged in the trade or business of assuming risks. It is also our opinion that it is more likely than not that the foreign corporation is not assuming such a risk when it assumes the private annuity payment obligations in exchange for assets worth the equivalent of the value of the annuity liability, and thus is not an insurer under Internal Revenue Code Section 4371.

The legislative history of Internal Revenue Code Section 4371 is consistent with this understanding.

The terms insurer and reinsurer referred to in the Committee Reports for Internal Revenue Code Section 4371 substantiate that our above analysis is consistent with the intended applicable meanings of such terms under Internal Revenue Section 4371.

The Committee Reports on Public Law 101-239 and Public Law 100-203 which amended Internal Revenue Code Sections 4371 and 4372 refer to the term 'risk' in the context of foreign insurance companies effectively connected with the conduct of an insurance business in

the United States or in the context of foreign insurance companies issuing policies or instruments in the nature of an indemnity bond.

The Committee Reports do not include other applications of the term insurer other than those applications in the insurance company context. There are several points in the conference agreement in which the Committee Report evidences their concerns regarding the application of the use of the forthcoming Internal Revenue Code Section. The conference agreement in the Conference Committee Report for the Committee Report on Public Law 100-203, states that the agreement shall "provide regulatory authority to address the treatment of foreign insurance company investments in U.S. subsidiaries...Under the conference agreement, foreign source income that is attributable to a U.S. trade or business of a foreign property and casualty insurance company is treated as effectively connected with that trade or business."

The conference agreement indicates the intent and purpose behind Internal Revenue Code Section 4371 was to apply an excise tax to foreign insurance companies engaged in a U.S. trade or business. "Several factors are cited by the Treasury Department in support of this view. First, the provision applies to life insurance companies and property and casualty insurance companies in a manner substantially similar to present law rules covering only life insurance companies...Second, the provision attributes to a foreign insurance company an amount of assets determined by reference to the assets of comparable domestic insurance companies, thus reasonably measuring the amount of assets that the U.S. trade or business of a foreign insurance company would be expected to have were it a separate company dealing independently with non-U.S. offices of the foreign insurance company...The conferees understand that the provision governing foreign insurance companies solves a statutory problem in the context of the broader issue: measuring the U.S. taxable income of a foreign corporation that is effectively connected with its U.S. trade or business."

Under the facts presented to us, the foreign corporation will not be engaging in business as a foreign insurance company and therefore will not be subject to the excise tax under Internal Revenue Code Sections 4371 and 4372. The foreign corporation is neither assuming a risk of loss as an insurer nor is it in the business of making, issuing, renewing, or continuing insurance policies or underwriting a policy with whom a contract of insurance is made as a reinsurer. Therefore, it is more likely than not that the foreign corporation does not meet the statutory definition of insurer and will thus not be subject to the excise tax under Internal Revenue Code Section 4371.

The involvement of the foreign corporation will be limited to its assumption of the private annuity agreement in exchange for its



receiving assets worth the equivalent of the value of the annuity liability. The private annuity agreement will be issued by you, and you are not an insurer engaged in the business of customarily issuing insurance policies or annuities, and you are contractually barred from issuing additional annuities under Section XXIII of the Private Annuity Agreement.

Thus, under the foregoing analysis, the foreign corporation first, is not an insurer as that term has been properly defined and applied according to the statute's legislative history, and second, is not assuming a 'risk' as an insurer as that term is properly interpreted by authorities in the insurance field.

Under Internal Revenue Code Section 4372(a), a foreign insurer is also defined as a nonresident alien individual, a foreign partnership, or foreign corporation which shall become bound by an obligation of the nature of an indemnity bond.

The foreign corporation will not become contractually bound by an obligation in the nature of an indemnity bond.

Appleman on Insurance and Practice Section 7001 states: "[I]ndemnity has been considered an essential element of a contract of insurance, so that a contract which does not possess this element has been held not one of insurance." Appleman further states in Section 7003 that "[A] contract which requires an indemnitor to indemnify the indemnitee for losses with which the indemnitor had no connection and over which it had no control would be a 'contract of insurance'".

The foreign corporation will not be an indemnitor indemnifying you for losses with which it has no connection and over which it has no control. It is our understanding that the foreign corporation is merely assuming an obligation and will not secure you against loss or damage and will not restore to you, in whole or in part, by payment or replacement for any losses incurred.

Thus the foreign corporation will not be indemnifying you.

It is also our understanding that the foreign corporation will not be responsible for any reimbursement to you or will it be a party to the contract between you and the annuitant. Therefore, pursuant to the contract between you and the foreign corporation, the latter will be assuming the obligation of the private annuity payments in exchange for assets worth the equivalent of the annuity liability, and will not be issuing assuming, continuing, or renewing an obligation in the nature of an indemnity bond.

Our examination of case law has disclosed a pair of cases which, when read together, clarify the judicial interpretation of the term

"insurance."

These cases have led us to conclude that it would be unlikely that a court would find that the issuance of a private annuity by a corporation that it is not engaged in the issuance of other annuities or insurance policies (and, thus does not actuarially allocate the risk relating to the private annuity agreement to other annuity or insurance contracts) is equivalent to the conduction of business as an "insurer," and that it would be equally unlikely that a court would find that the assumption of the private annuity agreement by a foreign corporation that does not issue other annuities or insurance policies is to be deemed a "reinsurer," as such terms should reasonably be construed under Internal Revenue Code Section 4372(a).

The first case is the case of Professional Lens Plan, Inc. v. Dept. of Insurance, 387 So. 2d 548 (1st DCA 1980). In this case, the Florida Department of Insurance had issued a declaratory statement that a plan whereby optometrists agreed to furnish replacement lenses to their patients for an annual fee plus a fixed sum representing the costs of the lenses, was actually an insurance program.

The District Court of Appeal reversed the Florida Department of Insurance on the basis that the program did not involve any assumption of risk, distribution of loss, or payment of premium for assumption of risk. (387 So.2d 548, 550.)

Consequently, because in that case the District Court of Appeal found that the optometrists' plan "...did not involve any assumption of risk, distribution of loss or payment of premium for assumption of risk...", the plan was not subject to the Florida Insurance Statutes; (387 So.2d 548, 550.)

The District Court of Appeal thus held that Professional Lens Plan, Inc. was not providing insurance and was not subject to the Florida Statutes regulation insurance.

In its decision, the court in Professional Lens Plan, Inc. v. Dept. of Insurance cited the case of Guaranteed Warranty Corp., Inc. v. ex rel. Humphrey, 23 Ariz. App. 827, 583 P.2d 87 (1975). The Florida court explained that this Arizona case expanded upon the Florida statutory definition of the term "insurance" by indicating that normally there are five (5) elements that are present in an insurance contract.

These five (5) elements are:

- (1) no insurable interest;
- (2) a risk of loss;

- (3) an assumption of the risk by the insurer;
- (4) a general scheme to distribute the loss among the larger group of persons bearing similar risks; and
- (5) the payment of a premium for the assumption of the risk.

The court in Professional Lens Plan, Inc. v. Dept. of Insurance stated that a patient may obviously have an "insurable interest" in his or her contact lenses, and there may be a "risk of loss" of such contact lenses; however, the remaining three (3) elements of an insurance contract were not present in that case, according to the court.

The court found that there was no contractual obligation or duty between Professional Lens Plan, Inc. and the patients. The court then stated: "This determination alone would, in our opinion, dispose of the contention that Professional is engaging in a business of 'insurance.'" (387 So.2d 548, 550)

The court held in Professional Lens Plan, Inc. v. Dept. of Insurance, 387 So. 2d 548 (1st DCA 1980) that the contract between the optometrist and the patient was not an indemnification contract, but rather was a contract that provided for the purchase of additional or replacement contact lenses.

In our situation neither you nor the foreign corporation are or will be engaged in the insurance business, and neither you nor the foreign corporation will issue or assume additional annuity contracts beyond the one which is the subject of this opinion letter.

Consequently, there is an absence of a "general scheme to distribute the loss among the larger group of persons bearing similar risks."

In our situation there is likewise the absence of "the payment of a premium for the assumption of risk."

Therefore, in our situation the presence of all of the "five (5) key elements that are present in an insurance contract" is lacking, and neither you (the issuer of the private annuity) nor the foreign corporation (the party that will possibly contractually assume the private annuity liability from you) will be engaged in issuing an insurance contract as that term is defined in the common law.

As the court in Professional Lens Plan, Inc. v. Dept. of Insurance, 387 So. 2d 548 (1st DCA 1980) held that the contract between the patient and the optometrist was not an indemnification of contact lenses agreement, but was merely a contract providing for the purchase of additional or replacement contact lenses, so would it

be likely for a court in our situation to find, that the contract between you and the annuitant was not an indemnification agreement--it was a private annuity agreement, and it would be equally likely in our opinion that a court will find that the contract between you and the foreign corporation is not an insurance agreement, or a reinsurance agreement, or an indemnification agreement--it will be an assumption of private annuity liability agreement without a premium feature being present.

Therefore, it is our opinion that it is more likely than not that the foreign corporation will not be classified as an insurer for federal excise tax purposes.

It is also our opinion that the foreign corporation is not a foreign reinsurer as that term is properly defined and applied under Internal Revenue Code Sections 4371 and 4372(a), and therefore will not be subject to an excise tax as a foreign reinsurer under the aforementioned Internal Revenue Code sections.

Much confusion exists regarding the definition of the term reinsurance. The term has been used erroneously and applied indiscriminately in various situations.

According to Appleman on Insurance Law and Practice, Section 7681: "Reinsurance, to an insurance lawyer, means one thing only - the ceding by one insurance company to another of all or a portion of its risks for a stipulated portion of the premium, in which the liability of the reinsurer is solely to the reinsured, and handles all matters prior to and subsequent to loss. The true reinsurer is merely an insurance company or underwriter which deals with other insurance companies as its policyholders..... "

Additionally, Couch on Insurance 2d Section 80:1 states that the reason "[M]uch confusion exists in the law as to the definition of reinsurance [is] because of the failure to distinguish three situations: (1) succession; (2) novation; and (3) additional security for the additional undertaking... The mere fact that there has been a transfer of assets to a successor corporation does not establish that there has been a reinsurance contract or an assumption of liability to the original insureds. "

For example, it is our understanding that the foreign corporation will assume the obligation of payment of only one (1) private annuity transaction in exchange for receiving assets of an equivalent value and is not receiving an additional premium for such transaction. It is also our understanding that there will not be any sharing of risk between you and the foreign corporation as a reinsurer.

The foreign corporation is neither issuing the private annuity nor reinsuring the private annuity on your behalf and therefore is not

engaging in transactions as an insurer or reinsurer.

According to Kenneth Thompson, Reinsurance 4th Edition, pp 6 a reinsurance transaction is defined as a "...relationship established between two parties, which is based primarily on contract or understanding whereby one party, called the reinsurer, in consideration of a premium paid the reinsurer, agrees to indemnify under certain terms and conditions, another party, the reassured, against a risk previously assumed by the latter, the direct writer, in its primary insurance covering the original assured." You are issuing the private annuity in exchange for the equivalent of the present value of the annuity liability, and will not receive a premium in consideration for assuming a 'risk' as that term has already been properly defined. The foreign corporation is likewise not receiving a premium in consideration for it assuming the obligation to make the annuity payments. Further, no primary insurance exists in your situation.

Thus, the foreign corporation is neither an insurer nor a reinsurer as that term is properly used and referred to in the legislative history for Internal Revenue Code Sections 4371 and 4372.

It is thus our opinion that it is more likely than not that the anticipated transaction between the foreign corporation and you is not a reinsurance transaction as that term has been defined.

It is our understanding that the foreign corporation will not assume your financial responsibilities to the Annuitant for your past conduct. It is our further understanding that the foreign corporation's agreement to assume your obligation to pay private annuity in exchange for assets worth the equivalent of the present value of the annuity liability will not be in the nature of a reserve for the annuity, or a premium in the nature of a reinsurance transaction. It is also our understanding that the foreign corporation will not indemnify you for any claims against you and will not assume a risk if you should become insolvent.

While we believe that it is more likely than not that the foreign corporation will not be subject to a one (1) percent excise tax under Internal Revenue Code Section 4371, we wish to make you aware of Revenue Ruling 80-95 in which a foreign insurer was subject to the excise tax under Internal Revenue Code Section 4371 under an arrangement between the foreign corporation and a U.S. corporation that was characterized as being similar to one of reinsurance.

The facts of this Revenue Ruling are as follows: A domestic corporation which maintained disability plans for its U.S. citizens or resident employees and former employees entered into a contract with a foreign insurer which was neither doing business nor authorized to do business in the U.S. In return for an

actuarially computed annual payment, the insurer, which was not a party to the plans, indemnified the corporation for all required payment plans. The insurer incurred no liability to the employees and was neither responsible for plan performance failures nor for the application or disposition of money paid to the corporation under the contract. The insurer had the right to audit claims against the plans and to protest what it felt were improper payments. Under these facts, the foreign insurance company was determined by the Internal Revenue Service to be subject to the excise tax imposed on foreign insurance engaged on the reinsurance of United States risks.

Under the facts presented in Revenue Ruling 80-95, the foreign corporation was obliged to indemnify the domestic corporation for losses sustained by the domestic corporation under the disability plans; thus the risk assumed by the foreign corporation under the contract was the same as the risk borne by domestic corporation under the disability plans. The fact that the domestic corporation had passed its risk to the foreign corporation did not change the nature of the risk. The arrangement was similar to one of reinsurance in which the primary insurer transferred some or all of the risk it had assumed to a second insurance company.

It is our opinion that the facts in your situation are substantially different from the facts described in Revenue Ruling 80-95, and your transaction would thus not be recharacterized as reinsurance. In your situation, it is our understanding that there will be no sharing of risk, no payment of a premium in consideration for the assumption of the obligation for the payments of an annuity, and no element of control retained by the you with respect to premium payments, auditing claims, or indemnification guarantees. Thus, the proposed factual situation materially differs in your situation from the facts and circumstances set forth in Revenue ruling 80-95.

It is our understanding that the contract between the you and the foreign corporation is a transaction at arm's length under which the foreign corporation will agree to assume the obligation to pay the private annuity in exchange for the receipt of offsetting assets worth the equivalent of the present value of the annuity liability.

As a transaction at arm's length in which a private annuity is exchanged for assets of an equivalent value of the annuity's estimated liability is not of the type of anticipated obligation of the nature of an indemnity bond or the type of transaction carried on by an insurer or reinsurer as contemplated under Internal Revenue Section 4371 and 4372. It is our opinion that it is more likely than not that if the foreign corporation is involved in an arm's length transaction with you to pay a private annuity in exchange for the receipt of assets of equivalent value to the

annuity liability, and the foreign corporation is not engaging in ~~insuring or reinsuring property~~, and is not bound by any obligation to you in the nature of an indemnity bond then there will not be an excise imposed on such a transaction.

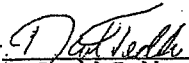
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**CONCLUDING REMARKS**

The accuracy of the opinions expressed herein are dependent on the actual facts and circumstances and the application of the relevant legal principles thereto. We are aware that a portion of our opinions expressed herein are predicated upon future activities and transactions. We recommend that you carefully review the applicable law to such transactions prior to their implementation.

Respectfully Submitted,

Pratter, Tedder & Graves

By:   
David Tedder,  
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February 22, 1996

The Tallulah International Trust  
 c/o Lorne House Trust Limited, Trustee  
 Castletown, Isle of Man  
 British Isles

Dear The Tallulah International Trust:

You have requested the law firm of Chatzky and Associates, A Law Corporation to review and comment on the proposed sale of compensatory "Nonqualified Options" herein defined and identified in Schedule A, in exchange for a private annuity, with such sale to occur during the 1996 taxable year for United States income tax purposes and United States income withholding tax purposes.

Before we provide you with our analysis of these issues we wish to make you aware that this memorandum is merely an expression of our learned views with respect to these issues. Our opinion does not command any legal authority and may be rejected by a government official, agency, private party, or anyone else. Thus, this memorandum has no binding authority or official status of any kind, type, or character. We cannot assure you or anyone else that the opinions and conclusions contained in this opinion letter will be sustained by the Internal Revenue Service, any court of law, or anyone else. Our opinions represent our views on these issues, but they do not represent our guarantee that they will be followed or accepted by anyone else, and we expressly disclaim any responsibility or liability in the event our views are not followed or accepted.

In addition, this memorandum does not cover or address any issues not expressly covered herein. This memorandum is strictly limited to our interpretation of the United States federal income tax consequences that are likely to arise as a result of the proposed transaction described hereinbelow.

Permanent Subcommittee on Investigations

EXHIBIT #34d

CONFIDENTIAL  
 PSI00131205



This memorandum is based on the status of the pertinent United States tax laws as of the date in which this memorandum is written. The tax law changes very rapidly, and should there be any change in the applicable law or the facts and circumstances relating to the events described herein, the opinions expressed herein would necessarily require a reevaluation in the light of such changes. Additionally, pending legislation presently exists that if enacted might impact the proposed transaction and the tax consequences pertaining thereto.

There is no assurance that the Internal Revenue Service or anyone else will not raise issues that have not been addressed herein.

For the sake of brevity, our discussion of the applicable legal principles will omit certain cases and other authorities that may apply to the facts and circumstances of these matters. We will take them into account in issuing this opinion, however.

In the event there is any change in the tax principles or laws applicable to our opinions herein, we specifically disclaim any undertaking or obligation to advise you or anyone else of any such changes that may hereafter occur.

Our opinions are based on the correctness of the facts and circumstances set forth herein, and our understanding that the factual scenario set forth hereinbelow is complete, accurate, true, and correct.

The Internal Revenue Service, other government agencies, and courts each possess the ability to challenge the legitimacy and reality of an entity or a transaction and can claim that an entity or a transaction are something other than what the parties intended them to be. Government authorities can recharacterize a transaction into something other than what the parties intended.

There are numerous instances when the Internal Revenue Service, judges or juries are in error. They are not infallible. They can thus misread or misapply the legal principles involved in the case, leading to a tax result or other legal consequence that may be contrary to what the taxpayer anticipated, and leading to a tax result or other legal consequence that may be wrong.

The Internal Revenue Service, other governmental agencies, and the courts generally examine the substance and business purpose and economic reality behind a transaction in a very careful manner to determine if the transaction is genuine and is to be granted recognition in the form presented for tax purposes.

Consequently, we need to caution you that the Internal Revenue Service, other governmental agencies, or a court might view the transactions that are the subject of this memorandum in a manner differently than either you or I would view them. Nonetheless, it is our opinion that the anticipated United States taxation consequences that are applicable to the anticipated transaction will be as indicated herein.

Our analysis does not address United States, state, municipal or foreign income taxes, inheritance taxes, gift taxes, estate taxes, property taxes, sales taxes, use taxes, bulk transfer tax, transfer tax, excise tax or any other taxes or duties of any kind, type, or character other than the United States federal income tax consequences and income withholding tax purposes described hereinbelow.

You should be aware that the Internal Revenue Service can charge interest on tax deficiencies and can impose numerous penalties if it disagrees with the tax treatment of the reported transactions.

It is our view based on the information presented to us as expressed herein that it is more likely than not that the anticipated federal United States tax treatment relating to the matters discussed herein will be as we opine herein.

#### Factual Foundation.

1. Sam Wyly is a United States citizen and resident who resides in the State of Texas.
2. Sam Wyly is a director of Michaels Stores, Inc., a Delaware corporation, and might also be considered to be an employee for legal and income tax purposes.
3. Pursuant to a *Non-Statutory Stock Option Plan* Michaels Stores, Inc. has provided Sam Wyly, other employees, and key advisors with a proprietary interest in its Company through the granting of "non-statutory stock options" which upon exercise permits the option holder to purchase shares of Company's authorized Common Stock.
4. Sam Wyly transferred these options to The Tallulah International Trust, a foreign situs grantor trust that is recognized as a "grantor trust" for United States income tax purposes.
5. You anticipate that The Tallulah International Trust will transfer the non-statutory options to an underlying foreign corporation that is wholly owned by a foreign situs non-grantor trust.
6. It is anticipated that the wholly owned underlying foreign corporation of a foreign non-grantor trust will issue a private annuity to The Tallulah International Trust in exchange for the receipt of non-statutory options of an equivalent value.

7. It is our understanding that it is the express intent of the parties to the transaction that the value of the non-statutory options will equal the value of the private annuity and that no gift or bargain sale or discounted sale price will arise as a result of the transaction. Further, it is our understanding that the private annuity is intended to be issued in an amount that is equal to the fair market value of the non-statutory options that are being sold in exchange for the private annuity. Neither any gift element nor any "bargain sale element" are intended to be made by you with respect to this private annuity transaction.

8. It is anticipated that the private annuity payments will not be secured by, chargeable to, or dependent upon the non-statutory options sold in exchange for the annuity. The amount of the annuity payments will be based on the fair market value of the non-statutory options at the time of the effective date of the Annuity Agreement.

9. We understand that the private annuity is intended to be unsecured. There are to be no security interests, guarantees, specific funds, or other forms of collateral or assurances that the private annuity payments will be made by the corporation other than the mere unsecured contractual promise of such corporation that it will make the annuity payments as they become due under the terms of the annuity agreement.

10. We further understand that the private annuity payments will not be chargeable to or dependent upon the non-statutory options transferred by The Tallulah International Trust in exchange for the annuity. Any income generated by the non-statutory options will belong to the foreign corporation outright, and will not be chargeable to the annuity payments.

11. We understand that the amount of the annuity payments will be based on the fair market value of the non-statutory options being exchanged for the private annuity at the time of the effective date of the Annuity Agreement and will not be based on any income generated by the non-statutory options that are being transferred for the private annuity.

12. We also understand that upon the consummation of the Annuity Agreement the possession and/or enjoyment of the non-statutory options being exchanged for the private annuity will reside exclusively with the acquiring foreign corporation, and The Tallulah International Trust will not preserve or reserve any control of any kind or character over such non-statutory options or any income therefrom that would constitute a retained interest in the possession and/or enjoyment of the non-statutory options being exchanged for the private annuity. It is thus expressly intended that The Tallulah International Trust will irrevocably surrender the enjoyment, control, ownership, and all economic benefits attributable to the ownership of the non-statutory options which are sold in exchange for the private annuity.

13. It is our understanding that the private annuity payments will contain an interest factor in the amount stipulated by the Internal Revenue Service Revenue Ruling that applies for the month in which the annuity agreement is entered into.

14. We understand that the corporation issuing the private annuity is not in the business of issuing annuities from time to time, and it will not issue any additional annuities during the term of its private annuity agreement with The Tallulah International Trust.

15. We further understand that the corporation issuing the private annuity is not a life insurance company or a bank and is not authorized to conduct either the banking business or the life insurance company business and does not intend to obtain such authorization.

16. We have been advised that there are no outstanding encumbrances on the non-statutory options, and consequently we do not express any opinion that relates to this issue.

17. You have advised us that the non-statutory options, which are the subject matter of this letter, are not actively traded on an established market.

18. You have further informed us that the non-statutory stock options are compensatory in nature and were issued to Sam Wyly as part of a stock option plan to compensate key advisors of Michael Stores, Inc.

II. Opinion and analysis of the anticipated 1996 federal income tax consequences that are likely to apply to the proposed sale during the 1996 taxable year of non-statutory options to a foreign corporation in exchange for a private annuity under the circumstances described herein:

A. Pursuant to the general federal income tax treatment of property exchanged for a private annuity the sale of non-statutory options to a foreign corporation in exchange for The Tallulah International Trust's receipt of a deferred private annuity of equivalent value is not a taxable event in the year 1996.

A private annuity transaction typically involves the transfer of appreciated property from an individual to a family member or a controlled corporation in exchange for a promise to pay a

series of equal payments over the annuitant's lifetime.<sup>1</sup> The promise to pay by a family member or corporation that is not in the business of issuing annuities has no ascertainable value, so no gain is currently recognized on the transfer.<sup>2</sup> Gain is recognized over the lifetime of the taxpayer, which is the term of the annuity. Generally, a portion of each annuity payment represents tax-free recovery of the annuitant's investment contract, a portion represents gain on the transfer, and the balance is ordinary income.<sup>3</sup>

The general federal income tax treatment of property exchanged for a private annuity is explained in Research Institute of America Federal Tax Coordinator 2d at Paragraph J-5256 as follows:

"The transfer of property in exchange for an *unsecured* private annuity is not a taxable transaction. Thus, a taxpayer who turns his property over to a member of his family or other private individual, or to his own corporation, which is not a life insurance company or a bank or an organization which issues annuities from time to time, in exchange for payments for life, has no *immediate* taxable gain... Although gain is not taxed immediately, the amount of gain must be reported ratably over the period of the annuitant's life expectancy, but only from that portion of the annual proceeds which is includible in income under the annuity rules."<sup>4</sup> See paragraph J-5256, emphasis is in the original text.

"The actual transfer isn't taxable because the promise to make the lifetime payments is considered to have no determinable value. It makes no difference if the obligor under the private annuity arrangement (i.e., the transferee) is financially sound at the time of the transfer since that 'private' transferee is not in the business of granting annuities, his solvency is not subject to the supervision and restrictions of insurance companies and banks, and may change over the payment period."<sup>5</sup>

A foreign situs United States grantor trust (The Tallulah International Trust) will be transferring non-statutory options to a foreign corporation wholly owned by a foreign non-grantor trust in exchange for the underlying foreign corporation's issuance of a private annuity of an equivalent value. The foreign corporation is not in the business of issuing annuities from time to time, and will not issue any additional annuities during the term of its private annuity agreement with The Tallulah International Trust, and the private annuity will be unsecured. The foreign corporation issuing the private annuity is not a life insurance company or a bank and is not authorized to conduct either the banking business or the life insurance company business and does not intend to obtain such authorization. Under these circumstances, it is our opinion that the annuity will more likely than not be taxable as a private annuity in accordance with the aforescribed federal income tax consequences, as opposed to its being taxable as a commercial annuity or otherwise.

<sup>1</sup> CCH Federal Tax Service at §A:8 120.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Research Institute of America Federal Tax Coordinator 2d at Paragraph J-5256 (Citations Omitted)

<sup>5</sup> *Id.*

B. The private annuity is not intended to contain a gift or bargain sale element, and the exchange of non-statutory options for a private annuity of equivalent actuarial value is likely to be excluded from federal gift tax.

The private annuity is intended to be issued in an amount that is equal to the fair market value of the non-statutory options that are being sold in exchange for the private annuity. Neither any gift element nor any "bargain sale element" are intended to be made by either you or the corporation with respect to this private annuity transaction.

Research Institute of America Estate Planning & Taxation Coordinator describes private annuity gift and estate taxation implications as follows at Paragraph 26,122:

"The transfer will not be subject to gift tax as long as the value of the annuity equals or exceeds the value of the property transferred. The entire value of the transferred property is excluded from the annuitant's gross estate. If the arrangement is properly structured, the value of the transferred property will not be brought back into the estate. In addition, the estate administration costs concerning the transferred property are eliminated. Also the annuitant will not be subject to transfer tax on any post-transfer appreciation in the value of the property. If the annuitant dies before his tabular life expectancy, the property will have been transferred to the obligor for less than its true value. While this may be a disadvantage in a deal with an unrelated party, the annuitant of a private annuity will presumably be pleased to have passed property to a loved one free of transfer tax and for low consideration."

Warnick, 805 T.M., *Private Annuities*, at page A-27 states:

"...[T]he proper method for deciding whether there is a gift is to compare the fair market value of the property with the present value of the annuity" under the estate and gift tax rules.<sup>6</sup>

<sup>6</sup> Warnick, 805 T.M., *Private Annuities*, at page A-27. Warnick further explains at Page A-27 and Pages C&A 1 through C&A-2 the following: Generally, private annuity transactions after April 30, 1989 are controlled by Internal Revenue Code §7520, which provides for an interest rate which is 120% of the Federal midterm rate under Internal Revenue Code §1274(d)(1) for the month in which the valuation is made. The Internal Revenue Service has taken the position that the standard Internal Revenue Code §7520 annuity actuarial tables should not be used unless the transfer instrument provides the annuitant with the degree of beneficial enjoyment that is consistent with the type of property interest the standard tables are designed to measure. The Internal Revenue Service litigated this issue in *Shapiro Est. V. Comm.*, T.C. Memo 1993-483 and the Tax Court strongly found in the taxpayer's favor. The Internal Revenue Service's position is that a single life annuity factor (Table A of Estate Tax Regulation §20.2031-7A(d)(6)) could not be used to value the interest of a 91-year-old annuitant because the fund was insufficient to provide a stream of payments for the 18 years of the annuitant's "extreme life expectancy," i.e., until age 109. The Internal Revenue Service unsuccessfully argued that a factor for a "term certain concurrent with one life" should be used because the fund would be exhausted within four years.

The Tax Court firmly rejected the Internal Revenue Service's approach in favor of the taxpayer.

In response, the Internal Revenue Service issued regulations, and in Gift Tax Regulation §25.7520-3(b)(2) the Internal Revenue Service states that it will not allow the use of the standard §7520 tables if the fund from which an annuity is to be paid may be exhausted before the end of the defined period of the annuity (which, under the actuarial assumptions of the Internal Revenue Code §7520 tables is age 110 for a life interest).

We caution you that if the foreign corporation that issues the annuity hereunder were to comply with these regulations, there is a serious risk that the annuity might be determined to be "guaranteed" throughout the annuitant's extreme life expectancy, thereby making the annuity an immediately taxable annuity for United States income tax purposes! In furtherance of this position the Tax

It is our understanding that the fair market value of the non-statutory options will equal the present value of the private annuity, and that a qualified actuary will be retained to calculate and verify this.

Warnick, 805 T.M., Private Annuities, at page A-28 further states that "[t]he simple fact that the value of the property exceeds the value of the annuity should not automatically mean that there has been a taxable gift. Before a finding of a taxable gift, there must be some evidence of the transferor's intent to make a gift."<sup>7</sup>

Additionally, the annuity payments that the foreign grantor trust receives must contain an interest factor in the amount stipulated by the Internal Revenue Service Revenue Ruling that applies for the month in which the annuity agreement is effectuated.

This is very important because the Internal Revenue Service can take the position that the present value of the annuity is less than the present value of the non-statutory options sold in exchange for the annuity if the annuity does not contain an adequate interest rate factor to compensate for the time delay to The Tallulah International Trust in receiving its consideration for the sale and exchange of the non-statutory options.<sup>8</sup> For example, see Warnick, 805 T.M., Private Annuities at page A-35 discussing the United States Tax Court decision in *LaFargue v. Commissioner*, 73 T.C. 40 (1979), which was affirmed in part and reversed in part by the United States Court of Appeals for the 9th Circuit in 689 F.2d 845 (9th Cir. 1982), in which the Tax Court found that the annuity transaction was not taxable as a private annuity for among other reasons:

"...(T)he transaction was not based on the actuarial tables and did not include an interest factor, and there was a large gap between the present value and the fair market value of the annuity. ..."

Court stated in *Shapiro Est. v. Comm.*, T.C. Memo 1993-483, that "[t]he IRS argues that unless the annuity is 'guaranteed' throughout an annuitant's extreme life expectancy...the computation of the annuity's present value must be made on a case by case basis using a special actuarial factor supplied by the Internal Revenue Service." This income tax issue has not yet been litigated. Thus, the avoidance of a gift tax through a complete compliance with the regulations might generate an immediate income tax. Conversely, the avoidance of the income tax issue by "underfunding" the corporation to avoid deeming the annuity to be effectively "guaranteed" throughout the annuitant's extreme life expectancy of the human life span of 110 years might generate a gift tax if the new Gift Tax Regulation is upheld. Furthermore, Income Tax Regulation §1.7520-3(b)(2)(ii) similarly prohibits the use of a standard 7520 annuity factor if the annuity is expected to exhaust the fund before the last possible annuity payment is made in full assuming that the annuitant (Sam Wyty) will survive until the age of 110 years. The Internal Revenue Service has also promulgated new Estate Tax Regulations which are consistent with the Gift Tax Regulations and Income Tax Regulations cited above. (For example, Estate Tax Regulation §20.7520-3(b)(2)(i) requires the fund to be able to pay all annuity payments in full under the assumption that Sam Wyty, the annuitant, will survive until the age of 110 years. It is at least arguable that these new Income Tax Regulations, Gift Tax Regulations, and/or Estate Tax Regulations will be held to be invalid in accord with the reasoning of the United States Tax Court in *Shapiro Est. v. Comm.*, T.C. Memo 1993-483. Because the The Tallulah International Trust will not retain any mortgage, lien, pledge, or security interest in or with respect to the non-statutory options designated in Schedule "A", and there is and shall be no security or collateral for the payment of the Annuity hereunder, and the Obligor corporation will not establish any security or any fund or other specific chargeable source for the payment of the purchase price (being the Annuity) hereunder it is questionable whether that the Internal Revenue Service would be successful in an attack that the Annuity is a "guaranteed" Annuity.

<sup>7</sup> In *Beattie v. Comm.*, 159 F.2d 788 (6th Cir. 1947) the court held there was no gift, despite evidence that the annuity was worth only 30% of the value of the property, because there was no evidence of the transferor's intent to make a gift. (However, in *Beattie* the transferee was an educational institution, not a member of the transferor's family.) As a practical matter it would be difficult to show the absence of donative intent when the transferee is "related to" the transferor.

<sup>8</sup> *Id.*

Although the United States Court of Appeals for the 9th Circuit reversed the Tax Court's holding that the transaction did not involve a private annuity, it is important that the annuity contain an adequate interest factor to account for the time value of money.

In your situation it is clearly the intent of the parties that the price of the annuity is to be equal to the value of the non-statutory options being exchanged for the annuity, and no gift or other valuation benefit in excess of such value is intended to be received by either party to the agreement. It is thus our opinion that it is more likely than not that no gift tax will be imposed on your disposition of the non-statutory options in exchange for the grantor trust's receipt of a private annuity of an equivalent value, provided the actuarial value of the non-statutory options being transferred in exchange for the receipt of the private annuity are of an equivalent actuarial value.

You have further advised us that the foreign corporation that is issuing the private annuity will be adequately capitalized to fully comply with Gift Tax Regulation §25.7520-3(b)(2), Estate Tax Regulation §20.7520-3(b)(2), and Income Tax Regulation §1.7520-3(b)(2)(i), which should enable the corporation to fund the annuity through Sam Wyl's human life span as defined in such regulations, thus avoiding a gift tax assessment that otherwise might be asserted had these regulations been violated.

C. The annuity payments must be unsecured to avoid immediate taxation of The Tallulah International Trust in 1996 with respect to the disposition of the non-statutory options in exchange for an annuity of an equivalent value.

The United States Tax Court has held that the private annuity income tax rules apply only to private annuities that are unsecured. If the annuity payments are secured the annuity will be taxable as if it were a commercial annuity rather than a private annuity. (See *Estate of Lloyd Bell*, (1973) 60 TC 469 and *212 Corp.*, (1978) 70 TC 788.)

For example, the Tax Court in *Bell* held that the property transferred in exchange for the private annuity was secured because such property was placed in escrow as security for the annuity payments, and the annuity agreement also provided for a "cognovit" judgment against the parties issuing the annuity in the event they defaulted in making their annuity payments. Consequently, the Tax Court applied the rules pertaining to commercial annuities to the transaction and held that the taxpayers had an *immediately taxable gain* when they exchanged their appreciated stock in exchange for the secured private annuity.

It is our understanding that the private annuity being issued to The Tallulah International Trust is intended to be unsecured. There are to be no security interests, guarantees, specific funds, or other forms of collateral or assurances that the private annuity payments will be made by the corporation other than the mere unsecured contractual promise of such



corporation that it will make the annuity payments as they become due and payable under the terms of the annuity agreement.

In addition, the private annuity payments will not be chargeable to or dependent upon the non-statutory options transferred by you in exchange for the annuity. The options and any proceeds and/or income generated by the options will belong to the corporation outright, and will not be chargeable to the annuity payments. The amount of the annuity payments will be based on the fair market value of the non-statutory options being exchanged for the annuity as of the date of the Annuity Agreement, and will not be based on the income generated by the non-statutory options being exchanged for the annuity.

Furthermore, the possession and/or enjoyment of the non-statutory options being sold in exchange for the private annuity will reside exclusively with the corporation, and you will not preserve or reserve any control of any kind or character over such non-statutory options and the income therefrom that would constitute a retained interest in the possession or enjoyment of the non-statutory options being sold in exchange for the private annuity. It is thus expressly intended that you will irrevocably surrender the enjoyment, control, ownership, and all economic benefits attributable to the ownership of the non-statutory options which are being sold in exchange for the private annuity.

Consequently, provided that the private annuity payments will be unsecured and will always remain unsecured it is our opinion that it is more likely than not that the private annuity will not be taxable as a secured annuity which is taxable as a commercial annuity.<sup>9</sup>

D. It is more likely than not that the original issue discount tax treatment of debt instruments (that could impose a tax on the annuity prior to the receipt of the annuity payments) will not apply to the contemplated annuity transaction.

In early April, 1995, the Internal Revenue Service issued proposed regulations regarding the applicability of the original issue discount rules to deferred private annuities, among other types of transactions.

The proposed regulations seek to treat certain annuity contracts as debt instruments for federal income tax purposes. This means that, under certain circumstances, the income flowing from assets transferred in exchange for an annuity would be taxable to the annuitant in the year earned, regardless of the year in which the annuity payments were received. The proposed regulations provide that this adverse tax treatment may be avoided as long as the annuity payments under the contract are periodic payments made at least annually for the life

<sup>9</sup> However, as we indicated in footnote number 6, *supra*, we again advise you of the potential risk that the compliance with the new regulations under Internal Revenue Code §7520, such as Income Tax Regulation §1.7520-3(b)(2)(i), might cause the annuity to be constructively secured or guaranteed, which could lead to an immediate income taxation of the annuity from the disposition of the options by the Trust in the year 1996.

or lives of one or more individuals, the payments do not increase during the term of the contract, and the payments begin within one year of the date of the annuitant's initial investment in the contract. (See Proposed Income Tax Regulation §1.1275-1 (d)(2).)

However, the Preamble to the Proposed Regulations indicates that the proposed regulations, "only apply to annuity contracts that are also debt instruments under general principles of federal income tax law... For example, an annuity contract under which payments are wholly contingent on the continued life of an individual generally is not a debt instrument for federal income tax purposes. As a result, such a contract will continue to be taxed as an annuity contract under Internal Revenue Code §72."

The explanation to the proposed regulations thus suggests that annuity contracts under which payments are wholly contingent on the life of an individual "generally" will not be recharacterized as debt instruments and will not be taxed as such – even when such contingent payments are deferred under the contract. However, the explanation does not entirely eliminate the possibility that the IRS might proceed with such a recharacterization in certain cases and impose tax accordingly.

This issue is discussed in Research Institute of America Federal Tax Coordinator 2d at Paragraph J-4057 as follows:

"The proposed rules would only apply to annuity contracts that were also debt instruments under general principles of federal income tax law. An annuity contract that was not such a debt instrument would not be subject to the OID rules, and it would be unnecessary to determine if it was covered by the exception. Thus, for example, an annuity contract whose payments were wholly contingent on the continued life of an individual wouldn't be a debt instrument for federal income tax purposes and would continue to be taxed as an annuity contract under Code Sec. 72."

This appears to be consistent with the Internal Revenue Code statute being construed, §1275(a)(1)(B)(i) which in pertinent part states that the "term 'debt instrument' shall not include any annuity contract to which section 72 applies and which - depends (in whole or in substantial part) on the life expectancy of 1 or more individuals..."

Thus, it is our view that it is more likely than not that the original issue discount tax treatment of debt instruments (that could impose a tax on the annuity prior to the receipt of the annuity payments) will not apply to the contemplated annuity transaction.

E. The disposition of compensatory non-statutory options by The Tallulah International Trust, a grantor trust, in an arm's length transaction under which non-statutory options<sup>10</sup> are transferred in exchange for the receipt by The Tallulah International Trust of a substantially nonvested private annuity of an equivalent value issued by the obligor corporation is not a taxable event in the year 1996.

It is our opinion that it is more likely than not that an exchange of non-statutory stock options for a private annuity by The Tallulah International Trust, a grantor trust, will not be subject to an immediately taxable event because the private annuity is "substituted for" the non-statutory stock options under Income Tax Regulation §1.83-7(a) and such annuity payments are more likely than not taxable as ordinary income upon receipt.<sup>11</sup>

The federal income tax treatment of the foreign grantor trust's non-statutory stock options which are not traded on an established market is generally covered in Internal Revenue Code §83 and Income Tax Regulation §1.83-7.<sup>12</sup>

Internal Revenue Code §83 does not initially apply to the taxation of non-qualified non-statutory stock options because the options are not actively traded on an established market.<sup>13</sup>

<sup>10</sup> For options that do not have a readily ascertainable fair market value, the mere grant of the option is not treated as a transfer and application of the statute is postponed until the option is exercised. (See CCH Federal Tax Service §6 6.62)

<sup>11</sup> Although we have not been asked to opine on whether the transfer of non-transferable non-statutory stock options to a grantor trust is an immediate taxable event, our research indicates that such transfer should not trigger a taxable event. In Private Letter Ruling 9349004, the Internal Revenue Service ruled that non-statutory stock options issued to a taxpayer and transferred to a trust created for the benefit of the taxpayer's descendant's will not cause the receipt of income or gain to the taxpayer. The Internal Revenue Service concluded that the transfer to the trust did not constitute a disposition under Income Tax Regulation §1.83-7(a) because the transfer was not pursuant to an arm's length transaction, and a non-arm's length disposition of an option not taxed at grant should not cause compensation income to be recognized. However, if the trustee of the trust exercises the options, the taxpayer (or the taxpayer's estate) would be in receipt of taxable income under Internal Revenue Code §83(a) and the corporation issuing the options would be entitled to an Internal Revenue Code §83(h) deduction.

<sup>12</sup> Internal Revenue Code §83(a) provides that if property is transferred in connection with the performance of services to any person other than the person for whom the services are performed, the excess of (1) the fair market value of the property (determined without regard to any restrictions other than a restriction which by its terms will never lapse) at the first time the rights of the person having a beneficial interest in the property are transferable or are not subject to a substantial risk of forfeiture, whichever occur earlier, over (2) the amount, if any, paid for the property, will be included in the gross income of the person who performs the services in the first taxable year in which the rights of the person having the beneficial interest in the property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable. However, Internal Revenue Code §83(e)(3) provides in pertinent part that "[t]his section shall not apply to the transfer of an option without a readily ascertainable fair market value." Thus, Internal Revenue Code §83 should not apply to the The Tallulah International Trust's non-statutory options because the non-statutory options are not traded on an established market, and thus as a practical matter do not have a readily ascertainable value. (See CCH Federal Tax Service §6 6.221.)

<sup>13</sup> Income Tax Regulation §1.83-7(b)(1) states in pertinent part that "...[o]ptions have a value at the time they are granted, but that value is ordinarily not readily ascertainable unless the option is actively traded on an established market. If an option is actively traded on an established market, the fair market value of such option is readily ascertainable for purposes of this section." [Emphasis added.] It is our understanding that the non-statutory options which are the subject matter of this opinion letter are not actively traded on an established market, and thus the non-statutory options do not have a readily ascertainable value making Internal Revenue Code §83 inapplicable pursuant to Internal Revenue Code §83(e)(3).

Thus, because the non-statutory options currently held by the The Tallulah International Trust, a grantor trust, are not traded on an established market and do not meet the conditions imposed under Income Tax Regulation §1.83-7(b), they will not likely have a readily ascertainable fair market value, and will not be governed under Internal Revenue Code §83. As a practical matter no option will be considered to have a readily ascertainable value unless it is actively traded on an established market. (See CCH Federal Tax Service §6 6.221.)

Billman, 383 T.M., *Nonsaturatory Stock Options*, at pages A-5 and A-6 states:

"...[O]ptions that are not actively traded on an established market do not have a readily ascertainable fair market value...Moreover, the regulations create an irrebuttable presumption that an untraded option does not have a readily ascertainable fair market value unless four conditions are met:

- (1) the option is transferable by the optionee;
- (2) the option is exercisable immediately in full by the optionee;
- (3) neither the option, nor the underlying property is subject to any restrictions that have a significant effect on the option's value; and
- (4) the fair market value of the "option privilege" is readily ascertainable.

In general, the effect of this rigorous approach to valuation of untraded options is to deny readily ascertainable fair market value status at option grant, forcing taxation at option exercise."

However, if an option without a readily ascertainable value is sold or otherwise disposed of before it is exercised ( e.g. in exchange for a private annuity of an equivalent value), the restricted property rules will apply to the transfer of money or other property received in the same manner as they would have applied had the property been transferred<sup>14</sup> pursuant to the exercise of the option.<sup>15</sup>

*Thus, in the event that the non-statutory options are exchanged for a private annuity, the taxation of the transaction would be analyzed as if the option were exercised, and the amount [the private annuity] to be included as gross income would be determined under Internal Revenue Code §83(a) and §83(b).<sup>16</sup>*

Billman, 383 T.M., *Nonstatutory Options*, at page A-19 states:

"If an untraded option is not taxed at grant, §83(e)(3) provides that §83 will apply to the exercise of the option. *If the property received upon option exercise is restricted, §83 will apply to that receipt of property in the same manner as it applies to a direct transfer of restricted property in a nonoption context.*" [Emphasis added].

<sup>14</sup> Income Tax Regulation §1.83-7(e) states in pertinent part that "...[i]f section 83(a) does not apply to the grant of such an option because the option does not have a readily ascertainable fair market value at the time of the grant, sections 83(a) and 83(b) shall apply at the time the option is exercised or otherwise disposed of, even though the fair market value of such option may have been become readily ascertainable before such time. If the option is exercised, sections 83(a) and 83(b) apply to the transfer of property pursuant to such exercise, and the employee or independent contractor realizes compensation upon such transfer at the time and in the amount determined under section 83(a) and 83(b). If the option is sold or otherwise disposed of in an arm's length transaction, sections 83(a) and 83(b) apply to the transfer of money or other property received in the same manner as sections 83(a) and 83(b) would have applied to the transfer of property pursuant to an exercise of the option." [Emphasis added].

<sup>15</sup> <sup>1d</sup>

<sup>16</sup> Income Tax Regulation §1.83-7(a) states in pertinent part that "[i]f the option is exercised, sections 83(a) and 83(b) apply to the transfer of property pursuant to such exercise, and the employee or independent contractor realizes compensation upon such transfer at the time and in the amount determined under section 83(a) and 83(b)." [Emphasis added]

Thus, Internal Revenue Code §83 should apply to the receipt of the private annuity as if the private annuity were "substituted" for the non-statutory options.

According to Billman, 384 T.M., Restricted Property Section 83, at page A-3:

"...[T]he receipt of an unfunded and unsecured promise to pay money in the future...is not a transfer of "property" and thus is not a taxable event under §83. Rather, the questions of whether the receipt of an unfunded and unsecured promise to pay money in the future produces gross income, and, if so, when and in what amount, are to be determined under well-established principles of actual and constructive receipt of income..." [Emphasis added].

In *Richard A. Childs et. al. v. Commissioner*, 103 T.C. No.36 (Nov.14 1994), United States Tax Court Judge Scott held that an annuity issued to an individual was an unsecured promise to pay money in the future, and thus was not "property" as that term is defined under Internal Revenue Code §83.

Thus, it is likely that Internal Revenue Code §83 is inapplicable to The Tallulah International Trust's receipt of a private annuity in exchange for the transfer of non-statutory options of an equivalent value, because a private annuity does not meet the definition of transfer of "property" within the meaning of Internal Revenue Code §83.

Consequently, if Income Tax Regulation §1.83-3(e) directs that Internal Revenue Code §83 and the regulations promulgated thereunder shall not apply to an unsecured promise to pay money in the future, no other Internal Revenue Code Section including Internal Revenue Code §61, should apply to the transaction.<sup>17</sup>

Thus, Internal Revenue Code §83 will likely be inapplicable to the contemplated transaction, and the private annuity income taxation rules (e.g., Revenue Ruling 69-74) will govern the taxation consequences relating to the transfer.<sup>18</sup>

The Research Institute of America Federal Tax Coordinator 2d at Paragraph J-5256 explains the federal income tax treatment of property exchanged for a private annuity as follows:

"The transfer of property in exchange for a private annuity is not a taxable transaction. Thus, a taxpayer who turns his property over to a member of his family or other private individual, or to his own corporation or other corporation, which is not a life insurance company or a bank or an organization which issues annuities from time to time, in exchange for payments for life, has no immediate taxable gain. (Emphasis is included in the text)

<sup>17</sup> Billman, 383 T.M., Restricted Property Section 83, at page A-3.

<sup>18</sup> Private Letter Ruling 9349004 states that if Internal Revenue Code §83(a) does not apply to the grant of the option because it does not have a readily ascertainable value at the time of grant, §83 will apply at the time of the exercise or disposition of the option, and income is realized. Private Letter Rulings may not be cited as precedent (See Internal Revenue Code §6110(j)(3)) but they reflect the position of the Internal Revenue Service and are thus useful in that regard.

However, the payments under the arrangement are taxable when received, see Paragraph J-5256. The actual transfer isn't taxable because the promise to make the lifetime payments is considered to have no determinable value. It makes no difference if the obligor under the 'private' transferee is not in the business of granting annuities, his solvency is not subject to the supervision and restrictions of insurance companies and banks, and may change over the payment period. (Citations omitted.)"

Because it is unlikely that either the non-statutory options or the private annuity received in exchange therefor is subject to Internal Revenue Code §83 coverage, it is our opinion that it is more likely than not that the non-statutory options transferred in exchange for the private annuity will be taxable as property transferred in exchange for a private annuity in accordance with the aforescribed federal income tax consequences.

F. The subsequent exercise of the non-statutory options by the obligor will not likely generate a taxable event to The Tallulah International Trust because the compensation element will remain opened until the year The Tallulah International Trust receives its annuity payments.

It is our understanding that it is the intention of the parties that the disposition of the non-statutory options will occur in an arm's length transaction at fair market value.

The private annuity rules provide that no taxable event will occur to The Tallulah International Trust until the annuity vests (when the annuity payments are received by The Tallulah International Trust). Consequently, the exercise of the options after the transfer of the options to the obligor foreign corporation is not likely to be a taxable event to The Tallulah International Trust.

It is our understanding that non-statutory options being transferred by The Tallulah International Trust do not have a readily ascertainable value, and therefore their treatment is not governed by Internal Revenue Code §83. Income Tax Regulation §1.83-7 provides guidance with respect to the taxation of nonqualified stock options without a readily ascertainable value,<sup>19</sup> and Internal Revenue Code §83(h)<sup>20</sup> generally governs the allowability, the amount, and the timing of a deduction to an employer with respect to the transfer of property in connection with the performance of services to which Internal Revenue Code §83 applies.

<sup>19</sup>We believe that there is an inherent inconsistency between the Statute and the Regulations, because the Statute clearly states that this Statute shall not apply to the transfer of an option without a readily ascertainable value (see Internal Revenue Code §83(e)(3)), yet the Regulations determine the taxation consequences of an option to which the Statute does not apply.

<sup>20</sup>This section governs the timing of a deduction to an employer with respect to property transferred in connection with the performance of services to which Internal Revenue Code Section 83 applies.

However, Internal Revenue Code §83(h) provides in pertinent part that "[i]n the case of a transfer of property to which this section applies...", thereby excepting property transferred in connection with the performance of services to which Internal Revenue Code §83 does not apply, (e.g. a non-statutory option without a readily ascertainable value).

According to Billman 384 T.M., Restricted Property-Section 83, at page A-16 states:

"As to the amount of the deduction, the employer is entitled to a deduction equal to the amount in the income of the employee."

Internal Revenue Code §§3121(a) and 3306(b) define the term "wages" as all remuneration for employment, and Internal Revenue Code §3401(a) provides a similar definition with respect to an employer's obligation for the withholding of income tax.

Income Tax Regulation §§31.3121(a)-1(e), 31.3306(b)-1(c), and 31.3401(a)-1(a)4 generally provide that the medium in which the remuneration is paid is immaterial and the remuneration may be in cash or something other than cash. Under Income Tax Regulation §§31.3121(a)-1(e) and 31.3306(b)-1(c) remuneration paid in items other than cash shall be computed on the basis of the fair value of such items at the time of payment. Income Tax Regulation §31.3121(a)-2 provides that wages are paid by an employer at the time they are actually or constructively paid.

Because the non-statutory options are transferred in an arms length transaction for the exchange of a private annuity of an equivalent value, The Tallulah International Trust has not constructively or actually received "income" until such time as the first annuity payment is issued to and received by The Tallulah International Trust.

Income Tax Regulation §31.3402(a)-1(b) provides that the employer is required to collect the tax by deducting and withholding the amount thereof from the employee's wages as and when paid, either actually or constructively. To constitute constructive payment the wages must be credited to or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn upon at any time, and their payment brought within his own control and disposition.

Thus, the restrictions and condition of receipt of payment relating to the annuity payment will lapse upon the actual receipt of such annuity payment by The Tallulah International Trust.

Consequently, each annuity payment is more likely than not wholly taxable to The Tallulah International Trust as ordinary income, and upon the receipt of each such annuity payment Michaels Stores, Inc., the corporation which issued the non-statutory options, would be entitled to claim a corresponding income tax deduction.

With respect to the withholding tax requirements, liability will be incurred by Michaels Stores, Inc., the corporation which issued the non-statutory options, with respect to the withholding of income tax under Internal Revenue Code §3402(a) with respect to the annuity payments received as "substituted compensation" by The Tallulah International Trust.<sup>21</sup>

It is our opinion that it is more likely than not that no taxable event will occur until the annuity vests (when the annuity payments are received by The Tallulah International Trust), and the exercise of the options after the transfer of the non-statutory options the Obligor corporation pursuant to the annuity transaction is not likely to be a taxable event to Michaels Stores, Inc.

G. The private annuity contract is likely to be treated as being held by a natural person.

The foreign corporation intends to acquire the stock options by issuing a deferred private annuity to The Tallulah International Trust on the life of Sam Wyly. The Tallulah International Trust is a grantor trust for United States income tax purposes because its settlor is Sam Wyly who is a United States person and the trust has United States persons among its beneficiaries, namely Sam Wyly, the spouse of Sam Wyly, and the issue of Sam Wyly. (See the Third Schedule to the Amended and Restated Deed of Settlement.)

The annuity is intended to be classified as a deferred annuity because the commencement of the annuity payments is anticipated to occur more than one (1) year from the date of the annuity agreement.

An annuity which is not classified as a deferred annuity is classified as an immediate annuity. Internal Revenue Code §72(u)(4) defines an "immediate annuity" as an annuity which is purchased with a single premium or annuity consideration, with the annuity to have an annuity starting date which commences no later than one (1) year from the date of purchase of the annuity, and which provides for a series of substantially equal payments to be made not less frequently than annually during the annuity period.

Internal Revenue Code §72(u) in pertinent part indicates that if a deferred annuity contract (which is not an immediate annuity) is held by a person who is not a natural person then such contract shall not be treated as an annuity contract for federal income tax purposes and is to be taxed in accordance with the statutory formula set forth in Internal Revenue Code §72(u) unless an exception therein applies.

However, Internal Revenue Code §72(u) further states that:

<sup>21</sup> Revenue Ruling 67-257 and Revenue Ruling 67-366 stated that amounts received from an employer by an employee upon the cancellation of a non-statutory stock option are wages for wage withholding purposes. Revenue Ruling 79-305 further provided that the employment tax and wage withholding obligations arise only when there is income under §83(a) to the employee.



"For purposes of this paragraph, holding by a trust or other entity as an agent for a natural person shall not be taken into account."

The legislative history to this statutory provision indicates that:

"Under the Act (Tax Reform Act of 1986), if any annuity contract is held by a person who is not a natural person (such as a corporation or trust), then the contract is not treated as an annuity contract for Federal income tax purposes and the income on the contract for any taxable year is treated as ordinary income received or accrued by the owner of the contract during the taxable year. In the case of a contract the nominal owner of which is a person who is not a natural person, but the beneficial owner of which is a natural person, the contract is treated as held by a natural person." (See the Conference Committee Report on Public Law 100-647, reported in Commerce Clearing House of America Standard Federal Tax Reports (1989), at page 13, 189-8.)

This provision is briefly discussed and explained in Knickerbocker, 134-5th T.M., *Annuities* at page A-25 as follows:

"Section 72(u) does not apply if a trust or other entity holds the contract as agent for a natural person who is its beneficial owner."

Internal Revenue Code §679(a)(1) states in pertinent part that: "A United States person who directly or indirectly transfers property to a foreign trust ... shall be treated as the owner for his taxable year of the portion of such trust attributable to such property if for such year there is a United States beneficiary of any portion of such trust."

As we indicated above, Sam Wyly, a United States person, transferred property to The Tallulah International Trust, a foreign trust having its situs in the Isle of Man, with the trust having United States beneficiaries, namely Sam Wyly, the spouse of Sam Wyly, and the issue of Sam Wyly.

Consequently, Sam Wyly, the grantor-settlor of The Tallulah International Trust, is likely to be treated as the owner of such trust for his taxable year of the portion of such trust attributable to such property. To our knowledge, Sam Wyly is the sole and exclusive settlor of such trust. If so, he is likely to be treated as the owner of the entire trust estate of such trust for his taxable year.

Internal Revenue Code §671 states in pertinent part that: "When it is specified in this subpart that the grantor ... shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor ... those items of income, deductions, and credits against tax of the trust to the extent that such items would be taken into account under this chapter in computing taxable income or credits against the tax of an individual."

Internal Revenue Code §679 is included in subpart E which is expressly governed by Internal Revenue Code §671.

Income Tax Regulation §1.671-1(a) in pertinent part states that: "Subpart E (section 671 and following), Part I, Subchapter J, Chapter 1 of the Code, contains provisions taxing income of a trust to the grantor ... under certain circumstances even though he is not treated as a beneficiary under Subparts A through D (section 641 and following) of such Part I."

Income Tax Regulation §1.671-3(a)(1) in pertinent part states that: "When a grantor ... is treated under Subpart E (section 671 and following) as the owner of any portion of a trust, there are included in computing his tax liability those items of income, deduction, and credit against tax attributable to or included in that portion. For example:

"...If a grantor ... is treated as the owner of an entire trust (corpus as well as ordinary income), he takes into account in computing his income tax liability all items of income, deduction, and credit (including capital gains and losses) to which he would have been entitled had the trust not been in existence during the period he is treated as owner."

Consequently, in light of the rigid tax requirements that require Sam Wyly, a natural person who is the settlor-grantor of The Tallulah International Trust, a grantor trust, to take into account in computing his income tax liability all items of income, deduction, and credit (including capital gains and losses) that pertain to The Tallulah International Trust, a grantor trust, to which he would have been entitled had the trust not been in existence during the period he is treated as owner, we believe that it is more likely than not that the Internal Revenue Service and an applicable court of law will hold that the acquisition and holding of a private annuity contract by The Tallulah International Trust, a grantor trust, will be treated as if the annuity contract were held by Sam Wyly, a natural person who is the settlor-grantor of The Tallulah International Trust.

We thus believe that it is more likely than not that Internal Revenue Code §72(u) will not apply to the annuity transaction and that the annuity will be treated as being held by The Tallulah International Trust, a grantor trust, as an agent acting on behalf of its principal, Sam Wyly, a natural person who is the settlor-grantor of the trust.

### III. Concluding Comments.

The opinions contained herein have been carefully considered by us and reflect the federal income tax consequences we anticipate will apply to the areas we have discussed. Nevertheless, they are only opinions and should not be considered to be guarantees.

Our opinions have been limited to our examination of the federal income tax consequences regarding the issues discussed above, as indicated herein. Our opinion expressly does not

cover or concern itself with other issues not addressed herein, including but not limited to the reality of values.

Our opinion is based upon the status of the federal income tax law as of the date in which this opinion is written. Should there be any change in the applicable tax laws or the facts and circumstances relating to the events described herein, the opinions expressed herein will necessarily require a reevaluation in the light of such changes.

In the event there is any change in the tax principles applicable to our opinion herein, we specifically disclaim any undertaking or obligation to advise you of any such changes which may hereafter occur.

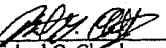
There is no assurance that the Internal Revenue Service or anyone else will not raise issues that have not been discussed herein.

Our analysis is based on the facts and/or assumptions contained in this letter. If such facts and/or assumptions are inaccurate or incomplete, our analysis and conclusions are equally inaccurate or incomplete and might vary substantially from those contained herein.

However, it is our view based on the information presented to us as expressed herein that it is more likely than not that the transactions described herein will be upheld as being bona fide.

Respectfully submitted,

**CHATZKY AND ASSOCIATES**  
**A LAW CORPORATION**

By   
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